OPINIONS OF MOFFUSSIL LANDHOLDERS

ON THE

BENGAL TENANCY BILL

COMPILED FROM COMMUNICATIONS RECEIVED BY THE CENTRAL COMMITTEE OF THE LAND-HOLDERS OF BENGAL AND BEHAR,

BY

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MEMBER OF THE CENTRAL COMMITTEE.

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1883.

CIRCULAR ADDRESSED TO LA
IN THE MOFUSSIL.

WITH reference to the Bengal Tenancy Bill introduced into the Governor General's Council for making laws and regulations, I have the honor by desire of the Central Committee of Landholders of Bengal and Behar to invite your opinion on the provisions of the Bill and on the following questions in connection therewith:

1. Have you got measurement papers of all your estates and Taluqs showing the areas of khamar lands in all your villages?

2. Would there be any practical difficulty to the area of khamar lands being fixed for ever after enquiry and reckoning all other lands as ryoti lands as the Bill proposes to do, (Sec. 6,) and do you approve of the principle of this Section?

3. Are you aware of lasting distinction being observed in the lands of any village in your estate, denoting that certain plots or tracts are permanently appropriated to the exclusive use of all or any class of ryots in the village and that certain other tracts whether occupied or not by ryots are similarly reserved as the Zemindar's khamar?

4. Having regard to lands which are currently called Ryoti and Khamar, are you aware of any custom, usage, or tradition which disentitles the Zemindar to convert into khamar any unoccupied ryoti land or entitles any ryot to claim the lease of lands left vacant by any of his fellow-ryot? Have you ever known of any such claim being set up or any allowance being made by the Zemindar in satisfaction of such claim?

5. Do you hold any land which is specifically appropriated as the Zemindar's Malikana or Moshaira? And have you not—if at all—always enjoyed the Malikana as an allowance upon the aggregate rental of estate?

6. Do you as Zemindar ever claim any higher proprietory right in respect of unoccupied Khamar than in respect of unoccupied Ryoti land?

7. What has been in your district the effect of the rule of 20 years' presumption in suits for enhancement of rent? How will it be modified by the change which the Bill proposes to introduce by allowing uniform payment of rent to be proved for any period of 20 years? Secs. 15 & 20.

8. In the case of tenures held since the Permanent Settlement but not at a fixed rent the Bill requires the landholder's "right to enhance" to be proved in every suit for enhancement of rent. Sec. 18. How would you prove such a right?

9. Sec. 21 provides that the rent of a tenure may be enhanced up to the limit of the customary rate, but if such rate cannot be determined the rent may be enhanced so as to leave the ryoti tenure-holder a profit of from 10 to 30 per cent. on his gross rents *minus* the costs of collection. How would such a rule operate in your district?

10. The Bill proposes to make all tenures, the rents of which are fixed, saleable and heritable like other immovable property. Section 25. The provision contained in Sec. 51 which gives the landholder a right of pre-emption does not apply to such tenures. Is the proposal liable to any objection?

11. Consider the Sections from 27 to 35 and say whether these would make adequate provisions for the registry of transfers of ryoti holdings by succession, sale, gift and otherwise?

12. How would the rule for acquiring right of occupancy contained in Sec. 45 operate in your district and affect your right?

13. Sec. 46 provides that unless a ryot has ceased by desertion or otherwise to hold for at least one year his right to the land shall not cease. How would such a rule affect your interests?

Consider the case of two applicants for such land, one offering a certain bonus on condition the rent-rate is the one hitherto

prevalent and the other offering no bonus but in its stead an increment over the prevailing rate: Call the first as one of class A and the second as of class B.

Does it not often happen that the offer of B is more profitable to you than that of A? And does it always happen that the offer of B is suicidal to his own interests?

Do you not think that the zemindars and ryots will both suffer in the long run by discouraging or prohibiting offers like that of B?

What do you think will be the ultimate condition of people in the circumstances of B? Do you not think that the provisions in the Bill will for ever prevent B from growing into the circumstances of A and that the former will eventually have to work as day-laborers under A?

14. The Bill allows right of occupancy to grow in respect of khamar lands unless the contrary is provided by written agreement. Sec. 48. Is this objectionable?

15. The Bill prohibits ryoti land being ever placed at the disposal of the Zemindar so that it might at his option be let out to tenants-at-will or at rates agreed to by the applicant but above the limits prescribed by law: Is such restriction consistent with any custom or usage that you know of? Is it safe for the adequate realization of your dues and of the Government Revenues?

16. Would the right of pre-emption given to landholders by Secs. 51 and 53 remove the objections to the saleability of all occupancy holdings?

17. Sec. 56 provides that when the land of occupancy ryots comes to the khas possession of the landholder, the person to whom such land is let will get it with a right of occupancy. Do you think this objectionable and if so on what grounds?

18. Sec. 56 provides that the rent of an occupancy ryot (not even that of land which has come to the khas possession of the landholder, Sec. 61) shall not be enhanced unless by a written contract approved of by a revenue officer, who shall see that the

amount of additional rent is not more than 6 annas in the Rupee and that the enhanced rent is not greater than one fifth of the annual value of gross produce of the land. Do you think this limitation on the freedom of contract necessary or desireable?

19. Do you see any objection to the rates of rent being determined by the executive instead of by the judicial authorities as provided in Chap. VI? Do you think the principles on which tables of rates are directed to be prepared just and reasonable, and do you think the procedure suggested will remove practical difficulties in the way of enhancement of rent?

20. Sec. 81 restricts the landholder's share of the produce in all cases where rent is paid in kind to one-half. Would this rule operate to reduce existing rents?

21. Would the rule as to instalments of rent provided in Sec 97 check litigation on the point, and simplify the decision of rent-suits?

22. Sec. 119 limits the rent in any case to five-sixteenths of the value of the produce. Is there any objection to the proposed restriction?

23. Consider the provisions regarding distraint contained in Sec. 166, and say whether they would serve the purposes of the existing law on the subject?

24. The Bill proposes to allow no appeals in suits for arrears of rent and some other suits of which the value does not exceed Rs. 50. Is this desireable?

25. What remarks have you to offer on the provisions of Chap. VIII. regarding ordinary ryots and compensation for improvements and also for disturbance?

26. Is transferability of occupancy tenures recognized in your estates or district; if it is recognised, does it require the consent of the landlord?

27. Do you consider the present procedure for the recovery of rent dilatory and inconvenient? If so, what modifications would you suggest?

28. Do you hold that the same law for the settlement and realization of rent should apply to Government and private estates? If so, what are your reasons?

A copy of the Bengali translation of the Bill is forwarded herewith for ready reference. The Committee will feel obliged if you will favour them with your opinion by the 15th day of June next.

Yours faithfully,

KRISTODAS PAL,

Secretary.

BRITISH INDIAN ASSOCIATION ROOMS;
No. 18 British Indian Street,
The 15th May, 1883.

NOTES

FROM THE SUB-COMMITTEE OF NUDDEA.

I. In Nuddea we have no measurement papers showing the areas of lands known by the name of *khamar*, but if the definition of *khamar* as it now stands applies to the Lokeshan lands there are then papers available for ascertaining the areas of the so-called *khamar* lands of a village or estate.

The zemindars of this District know of two kinds of lands only, the *jumaay* or lands held by tenants and *lokeshan* or lands not so held. Under the latter description of lands are included all uncultivable, uncultivated and jungle lands, as also the lands the zemindar might retain for his own private use as well as all lands that were at one time leased out, but have since reverted to the *lokeshan* lands having been deserted by their tenants. The well known *ootbundee* tenure of the Nuddea District is formed out of these *lokeshan* lands. Now the definition given in the Bill of the *khamar* lands will not include all these descriptions of lands consequently it is doubtful whether the *lokeshan* lands of the zemindar will be called *khamar* or *ryoti* lands of the village or estate.

The classification aimed at in the 2nd chapter of the Bill presupposes a lasting distinction recognized by custom between the lands of a village, some being exclusively appropriated to the ryots and some to the use of the zemindars under the name of *khamar*. But it will be found that no such distinction has been for a long time existing in this part of the country. The word *khas-khamar* of the olden times having gone through a variety of conditions several conflicting rights and interests have accrued to one party or the other and neither the zemindars nor the ryots have any idea of the distinction between *khamar* and *ryoti* lands of a village.

Sec. 5. The omission of the word "Tenure-holder" after the word "proprietor" is prominent. A tenure-holder certainly is intended to be placed on the same footing with the proprietor as regards the possession of his *khamar* lands. The omission therefore is due perhaps to an oversight. Why should not the provision in para 1 Sec. 5, be modified thus:—"&c. which a proprietor or a tenure-holder has held &c. &c. &c. as his private land &c. &c. &c."

An explanatory clause similar to that appended to the 3rd para, clause 5, sec. 3 should be added to the 1st para of sec. 5, and the same may be worded as follows:—"A proprietor or tenure-holder *may hold* land as his private land though it has been let out on temporary leases."

A fresh difficulty suggests itself on reference to sec. 6 which requires the proprietor to prove that certain lands to which he sets claim as his *khamar*, are really his so called *khamar* lands. Of course it is not meant that all lands not in the occupation of ryots when the survey party enters would be taken as zemindar's *khamar*. If this is not so and if the definition of *khamar* (which is not very clear) be allowed in its present form to stand in the Bill, the letting in of the survey party and other official underlings will drive the people to an unfamiliar class of disputes having had to be decided finally in the Board of Revenue on appeals at an immense cost and harassment to the ryots and zemindars who will further have to pay for the executive machinery set to work under chapter II of the Bill. On the score of heavy expense alone this chapter should be altogether omitted.

If after all the Legislature comes to a determination of settling the point of distinction between the *khamar* and *ryoti* lands of a village or estate why should not the line be drawn upon the basis of the right of occupancy holdings? Let those lands alone to which occupancy right would remain attached at the commencement of this Act be called the *ryoti* lands of a village or estate and the rest zemindars' *khamar* or private lands. By

the adoption of such a standard litigation would to a great extent be checked if not completely stopped.

II. If some lands are fixed as khamar for ever and if the incident, attached to the ryoti lands by the Bill, remain unchanged the landholders will in future be precluded from any more utilizing at his will and to his advantage the *lokeshan* lands left vacant by his royts or have otherwise passed to his hands. The landholders of this district have always enjoyed an absolute right of ownership over their *lokeshan* lands and to deprive them of this right recognized by an unexceptionable and universal custom would be to take away the last and not the least trace of proprietorship conferred upon them by Lord Cornwallis' Permanent Settlement. Even Mr. Ilbert's definition of *absolute proprietorship* while limiting the significance of the term to a considerable degree supposes the occupation of lands by ryots and Zemindars at one and the same time and denotes that the absolute proprietorship of the latter is subject only to the interests of the former. When, therefore, the lands have come to the Zemindar's hands his right to exercise the power of absolute ownership is in no way fettered by the interests of some body being at stake, the ryots then not being in occupation of those lands. Upon this view therefore the Landholders of this district are not in favour of the classification of lands into *khamar and ryoti* in the way proposed in the Bill.

III. Far from any lasting distinction being observed a Zemindar has always let out the lands of his village without making any distinction whatsoever on the ground that some of the lands belonged to him as his own private lands.

IV. Nothing has prevented the Zemindar or landholder from converting into his *khamar* or private lands any waste or unoccupied ryoti land of his village nor are they aware of any custom, usage or tradition either here or in any other district preventing the proprietors from doing so. In fact there is no shutting out from *nijjote* nor is there any complaint on the part of the ryot on

being refused a lease of the land left vacant by his fellow ryot and to which he has no right to set up a claim nor have we heard of any such claim being ever set up either in this or in any other district in the entire sweep of Bengal and Behar.

V. The landholders of this district have little to do with lands held as Malikana or *Mashohara.*

VI. All lands not in the occupation of ryots and whether or not one chooses to call them *khamar or ryoti lands* are treated alike as Zemindar's private lands over which he has an absolute proprietory right—at least in this district—and can dispose of them in any way he pleases.

VII. Act X of 1859 allowed the presumption to be made of uniform fixed rate if the tenure-holder could prove that he had paid such fixed rate for a period of twenty years immediately preceding the commencement of the suit, the effect of this has been to place many a *garkaimi* tenures created since the Permanent Settlement on the same footing as the *Istemrari Mukrori* holdings which alone were formerly allowed to enjoy the fixity of rate. Any further enactment towards this direction by allowing presumption to be made on proof of uniform payment for any period of twenty years would be to give the ryot an undue advantage over the Zemindar in more successfully contesting the latter's just right of enhancing the rent, for it will then be easier for the tenure holder and even for occupancy ryots to ask for such a presumption in every case by fabricating *dakhillas* old enough to be accepted by the court as genuine without formal proof of their being so and to shift the burden of proof on the Zemindars with whom it will always be impossible to disprove the allegation either by oral evidence of witnesses or by *jummabundi* papers, the latter being not always available in consequence of the frequent mutation of the proprietory rights at the hands of the Zemindars by sale mortgage, gift or otherwise.

VIII. Sec. 14 enacts that tenures held at fixed rates since the Permanent Settlement is not liable to enhancement, and sec 18.

provides for the enhancement of such tenures held at no fixed rate of rent. The changeableness of the fate of the particular tenure in respect of which an enhancement is claimed will, under ordinary rules, have to be proved by the zemindar before he proceeds upon the equitable grounds of enhancement similar to that laid down for the class of ryots described in chapter V. Sec. 18 clause (a) requires the "*especial custom of the district*" to be proved. This raises a point not clear in itself and naturally gives rise to the question as to what the Zemindars should prove. This section may further tempt the ryots described in chap V to set up the claim of tenure-holders named in sec. 14 in the absence of *Pattahs* and *Kubulyats*, the interchange of which until very lately was not much in practice. The effect of such a provision would therefore give rise to frequent and lengthened litigation.

IX. With the exception of a few *gati* jummas ryoti tenures with enhancible rates are instances of rare occurence in this district and the sub. sec. 3 of Sec. 21 therefore leaving the tenure-holder a maximum of 30 per cent of the gross rental *minus* collection charges will not affect much the interests of the zemindars of this district though the 30 per cent profit seems to be a little too high.

X. Sec. 25 makes permanent tenures transferable, but no provision has been made in the Bill for keeping the inimically opposed rival Zemindars and others from being the purchasers or otherwise, getting into the possession of these tenures. The principle on which the right of preemption with regard to occupancy tenures is based should be the guide in cases of Permanent Tenures also. If any distinction is to be maintained at all the prices of these tenures need not be fixed through the intervention of the Court, but the question may be left to be decided as agreed between the parties. In this case no doubt the Zemindars will in many instances be compelled to offer high prices to get rid of purchases by refractory tenants and rival zemindars, who might be ready to pay fancy prices in order to annoy the landlord, but

for this they would have little to complain if it is provided by a section that the new tenants with whom they might settle, will not acquire the rights and status of old tenants on the mere ground that they come by *permanent holdings.*

XI. Sec 28. sub. sec. 1, as it now stands would furnish a crop of litigation by introducing trespassers and *benami* purchasers into the lands—and the latter oftentimes proving men of straw zemindar's rents would hardly be realized in full; " or to show cause why it should not be registered " should be added after the words " requiring him to register the transfer or succession" in sub. sec. 1, Sec. 28.

XII. The rule for acquiring right of occupancy contained in sec. 45 will have the effect of changing the status of an overwhelming majority of the ryots of the Nuddea District now known as mere tenants-at-will, and raising them to the position of occupancy holders. The intention being to bring within the benefits of the right of occupancy all *khodkhast* ryots of old, the rule of 12 years prescription was adopted by the framers of Act X of 1859, as an additional measure to bring about the desired result so far as practicable and not as an exclusive enactment intended to exclude the so-called resident or *khodkhast* ryots of old, and although the measure had gone nearly so far as virtually to exclude certain tenants of old and to habilitate others in this place, it cannot be said that the framers of that Act did not anticipate what would be the result of their enactment. Perhaps it was simply thought that they could not proceed further in legislating upon the point without interfering with the proprietory rights of the Zemindars. The present Bill, however, goes behind Act X of 1859, and beyond the intention of the Secretary of State. His Lordship the Secretary of State for India says " whatever may have been the exact position actual or legal of the bulk of the Bengal ryots prior to the Permanent Settlement, there can be no doubt, after the exhaustive investigation which the question has now undergone, that their customary rights at least include

the right of occupancy *conditional on the payment of rate current* and established in the locality." Now upon this authority a *bulk* of the ryots (not all) are to be restored to their original position and the Secretary of State having directed that legislation should be taken up with this end in view has tacitly expressed a desire to rehabilitate, as far as consistent, the *khodkhast* ryots of old and not to make a sweeping enactment like that contained in sec. 45 of the present Bill. Zemindars would certainly have no objection to the *khudkhast* ryots being restored to this position. But where are they to be found? The country has been filled up with speculators, trespassers and mere squatters-upon-land and it would therefore be in direct contravention of the State Secretary's desire to allow these men to be secure in their possession.

Right of occupancy as Lord Hartington observes is "conditional on the payment of rate current." Why should not the section be modified to this extent and the payment of rent be made a condition for the acquisition of this right.

Sec. 45. "Notwithstanding any contract to the contrary"—such a provision does away with the freedom of parties to the contract. A provision that debars the ryots from contracting (though legally) out of law is ruinous in the interests of the ryots themselves. To secure some personal benefit a ryot may very well give up his rights under the law, but should the Bill come into operation they would not be able to secure such advantages for themselves. It would, therefore, be well to leave to the parties who are better judges of their own interests to decide whether or not the right of occupancy should accrue. Why should not the words "unless the contract be in writing registered" added after the words "contract to the contrary," (Sec. 45) though the land so held by him at different times during that period may have been different." The provision seems to be this, that if a ryot occupies a very small quantity of land, and in respect of that quantity acquires a right of occupancy by 12 years' possession, such right would attach to all land he may hold within the estate for

however short a period. This extension of the right of occupancy is not consistent with the proprietory rights vested in the Zemindars and as such the provision is, in consideration of principles, an unfair one.

Apart from the question of principle this provision would be a real hardship to landlords and would have the effect of reducing their income to a considerable extent. As has been observed there are several descriptions of *lokeshan* lands of this district that may not be included under the definition of *khamar*. With regard to some of these *lokeshan* lands (which for the present may be assumed to fall under the head of ryoti lands of an estate) there is a custom prevailing in this district by which the ryots are allowed to bring them under cultivation and pay rent to their landlords for such period or periods only as the lands were brought into cultivation. When the productive power decreases these lands are left fallow for sometime during which the ryots pay no rent at all. The rates of rent with regard to these lands are about double the rates ordinarily payable by an occupancy ryot of the same village or estate and this high rent is most fairly claimed by the landlord in consequence of the precarious conditions of the lands of which the cultivation and rent depend entirely upon the will of the ryots and power of the soil. Now under the present Bill if a *settled* ryot stealthily sows by night any such lands the landlord will be quite helpless to eject him and will have to accept only the "fair and equitable rate" made payable under the Bill by an occupancy tenant. It is further pretty sure that before long this settled ryot will relinquish such land no sooner he finds the power of the soil has been exhausted, for it will be a good bargain with him when he does not continue in the occupation of such lands. The landlord will thus neither be secure in a continued tenantry nor will he reap the advantages of higher rates in consequence of increased fertility. He will be a looser and the settled ryot will be benefited at his cost. It may therefore be respectfully suggested here that occupancy rights should not be given to all

lokeshan lands of a village, although some of these lands might fall under the class of ryoti lands of a village. If occupancy right is to accrue at all to them, the rates at which they would hold ought not to be regulated by a *Table of Rates* for the occupancy-holders under the Bill, but they should be as agreed to between the parties.

The Zemindars of this district have never had recourse to the process of shifting tenants for preventing the accrual of the right of occupancy. A few stray cases of this nature from the Behar districts might be in the memory of the authorities but a legislation that is sought to be made applicable to both Bengal and Behar should not contain so hard and fast a rule as embodied in the words "though the land so held by him at different times during that period may have been different."

XIII. Section 46. Zemindar will always be a looser of his rental for at least one year during which period he will have no right to make settlement with any other ryot. To make up for the loss thus sustained the Legislature comes forward to point out to the *bonus or premium* that might be offered by an incoming tenant settling with the landlord. Unfortunately however no such offer would be forthcoming. In this district the demand for tenants being always greater than demand for lands, the offer of a decent *bonus* is altogether out of question, and as the landlord cannot on economic point of view allow the tenure to remain vacant for a long time he will have always to make settlement with another ryot on the expiration of the year without being compensated by the offer of any *bonus*.

Of the two classes one offering a certain bonus but not an increment, and the other an increased rate but with the offer of no such bonus the zemindar will always prefer to have the latter description for his tenants for the following reasons. In the first place the Zemindar satisfies himself with a permanent increment, and secondly the solvency of the ryots is not thrown into doubt at the very outset. The offer of a heavy

bonus even in the ryots' point of view is not beneficial to his interests and would in many instances lead to the downfall of the improvident ryots of this district. The thriftless habits of the Bengal ryots coupled with the incidents attached to his occupancy tenures in its being made transferable by sale, mortgage &c. &c. &c. would often drive the ryots into the hands of *Mahajans*, who would subsequently buy up all the occupancy rights to be sublet to actual cultivators who are sure to obtain no better treatment at the hands of these middle men—the *Mahajans*—than at the hands of the zemindars if they had paid their rents direct to them. Perhaps their position would be worse. The Bill therefore does not create this right of occupancy in favour of the actual *cultivators*; on the other hand it distinctly says that the sublessees who are after all, the actual cultivators, are not to acquire a right of occupancy.

Sec. 50, "notwithstanding any contract to the contrary" is objectionable. The ignorant cultivator may be an object of protection of the Government, but why should the freedom of contract be withheld in respect of the more intelligent and speculative class of *Mahajans* and others who as has been found will always step into the shoes of the right of occupancy-holders at the detriment of the interests of the actual cultivarors. The growth of this class should be a matter of serious consideration for the Legislature, and if such a class is allowed to grow at all and if *Mahajans* and mere *speculators* are allowed to turn out petty landlords and grasp at the occupancy holdings, the Government should not interfere with the freedom of contract at least when the tenures pass into the hands of these men.

Sec. 47. "Second day of March 1883." This is certainly alarming. Why should not the word "commencement of this Act" be substituted for the above?

"Notwithstanding any contract to the contrary" should be omitted in this section.

XIV. Sec. 49. By allowing the occupancy right to grow in

respect of *khamár* lands the Bill certainly goes beyond the intention expressed in the following words of His Excellency the Viceroy. "This Bill was a Bill for the *Restoration* than for the *Redistribution* of property &c. &c. &c. What this Bill does is to leave the landlord, broadly speaking all the advantages which he has acquired during these 90 years." If the main object of the Bill therefore be to restore Zemindar's property to Zemindar and ryot's property to ryot—and if the classification of lands into *ryoti* and *khamar* be effected with this object in view there should on no account be attached to *khamar* lands incidents properly attaching to *ryoti* lands and directly at variance with the conditions of *khamar* or zemindar's private lands of old. The only distinguishing feature of ryoti land, as has been observed by no less an authority than Sir Ashley Eden is that "occupancy right exists or can be acquired over it." *Khamar* lands appear to have been originally merely the surplus unreclaimed lands of the village which the landlord was allowed during the continuance of his revenue engagement with the Government to cultivate for his own benefit, but which became *ryoti* as cultivators settled on them." Now if the object of the present Bill be to restore to the zemindars as far as practicable these "unreclaimed lands" of old which having gone through a variety of conditions, have been in many instances converted into *ryoti* lands, the only distinction that should, at all events, be maintained between such lands and the ryoti lands of a village, is that occupancy rights should not grow in respect of these *khamar* lands. If such a right is to accrue in respect of zemindars' *khamar* there will be in reality no *restoration*, but virtually a redistribution of the property. What good is then there in making a general survey of all lands and imposing upon both the landlords and ryots immense expenditure and harassment if all this would go for nothing?

Sec. 49 Sub Sec. (1). If the acquisition of a right of occupancy in *khamar* land is kept on the same footing as under the

existing law, there is reason for suggesting that in order to avoid confusion the wording of the present law should be retained and "lease for a term or year by year" should be substituted for "lease for a fixed period.

XV. XXII. Sec. 119 fixes the maximum rent payable by an ordinary ryot at five-sixteenths of the value of the gross produce. The limitation proposed by this section is not fair in consideration of the rights vested in the zemindars by the Permanent Settlement. The rate, besides, is very low. Many a *permanent* tenureholder pay a higher rate of rent, and should the Bill come into operation, it would be an inducement for them to relinquish their permanent holdings and take up lands as ordinary ryots at lower rates of rent. The effect would be to defeat the object of the law in so far as it is sought to give a secure and permanent character to ryot's holdings.

Sec. 92 & 93. As regards enhancement of rents of the class of ryots mentioned in Sec. 119, Section 93 creates an anomaly by placing the ryot who does not appear till *after a suit* has been instituted against him in a more advantageous position than the one who comes forward and agrees to an enhancement *without suit* and simply upon a notice under Sec. 92. Section 93 enacts that "if in any *suit* instituted under Section 92 the defendant appears and agrees to pay the enhanced rent demanded his agreement shall thereupon be recorded &c., &c., &c. And he shall be liable to pay from the commencement of the agricultural year *next following the date of the agreement*, whereas Sec. 92 enacts that a ryot who comes forward *within one month* from the service of the *notice* under Sec. 91 and presents to the court a statement in writing declaring his willingness to pay the enhanced rent shall be liable to pay the rent from the commencement of the year *next following the date of presentation of his statement.* Bearing in mind that in both these cases the ryots have been served with notices of enhancement six months before the commencement of the agricultural year for which the

rent is sought to be increased it would certainly appear strange that the good ryot who promptly complies with his landlord's wishes will be beginning to pay the enhanced rent a year earlier.

Sec 93 sub. sec. (1). The insertion of the words "next following the date of agreement" has been in effect to tell the landlords to serve his notice of enhancement a year and a half before the commencement of the year from which the rate is sought to be enhanced inasmuch as under Sec. 93 it will be in the interests of the ryots to wait with pertinacity till after the *suit* is instituted against him.

XVI. Zemindars ought to be thankful for the right of pre-emption given to them by Sec. 51 and 53, but such a right would be of little avail to them when they might be beset with the following difficulties in their way.

In the first place he may not always be in a position to buy occupancy holdings and in which case hostile tenants and rival zemindars will have easy access to his lands. Secondly, he is not allowed to buy on the same conditions with others. If the Zemindar purchases and lets out the holding to a new ryot this new comer will at once acquire a right of occupancy in the same, whereas if a ryot purchases and makes settlement with another ryot, the latter would not under any circumstances acquire a right of occupancy in the holding. This is certainly not fair.

XVII. The acquisition of the right of occupancy by an incoming tenant as provided for in Sec. 56 is open to objection on the following grounds:—(1) landlord shall have to pay heavy fines in the shape of prices so frequently as the ryot chooses to part with his holding (2) he will seldom reap the benefit of his purchase and obtain bonus from the newly settled ryot, (3) a ryot would be induced by the prospect of a fair price to dispose of his holding no sooner he enters into the same.

XVIII. Sec. 59. imposes a fresh restraint upon the freedom of contract. Some amount of evidence should be gone into by the Revenue officer before he can endorse his approval of the contract

by which the ryot engages to pay an enhanced rate. To satisfy him in the matter of a single document as to "what is fair and equitable rate" a whole host of the Muffusil people will have to attend his court from day to day at an immense cost and harrassment to the parties contracting.

XIX. It is not a matter of great significance whether the executive or the judicial authority determines the rates of rent. To arrive at a correct conclusion *judicial enquiry* however needs be instituted, but as it is hardly possible to find two fields in the same village of exactly the same quantity of lands, parties will never cease to question the correctness of classification of lands and rates fixed thereupon. It will ultimately be found after a good deal of expense that the scheme of *classification* with a view to fix different rates of rent is impossible and unworkable.

Sec 63. clause (a) "and other like considerations." No heed is likely to be paid by the Renvenue officer to these words of the section in determining the rates of rent. Why should not an enumeration of some other conditions of land such as "its drainage, health, means of communication with important places &c, &c, &c" be made before the words "and other like considerations?"

Sec. 64 clause (a) does not appear to include the existing rates of several occupancy tenures. Why should not a separate clause be added to the effect "that regard shall be had to the existing rates of occupancy ryots in all estates and villages?"

XX. Sections 81 and 82. The custom of paying rents in kind having fallen into disuse in this district the provisions contained in sections 81 and 82 will not much affect the interests of the landlords of the Nuddea district. The payment of rent in kind may not be in harmony with the civilized notion of things but still the system, as we find in cases of Bhowli tenures in Behar, is advantageous both to the Zemindars and ryots at the same time. Why should therefore the custom fall into disuse by a legislative enactment as contained in sec. 82?

XXI. Sections 97 and 98. Reading the two sections together it would appear that a tenure-holder who has perhaps to pay his superior landlord under custom or agreement more than 4 *kists* in a year will not in his turn be allowed to realize his dues from the ryots in an equal number of *kists* hitherto prevalent under similar custom or agreement. The tenureholder will thus be inconvenienced in two ways. In the 1st place he will have to meet the demands of his superior landlord before he has been able to realize anything from his ryots. Secondly his interest that might be decreed upon the money rent will suffer considerably on account of diminution of the number of *kists* payable in a year.

Except in particular cases where it becomes a necessity with them to bring the hostile tenants to their senses Zemindars as a rule never think of instituting rent suits before the expiration of the year and in a majority of cases at least in this district the ryots are allowed sufficient time to clear their just debts even after the expiration of two years. Zemindars also do not enforce the payment of interest upon the arrears provided the arrears are realized without recourse being had to Law Courts. Such acts of commisseration on the part of the zemindars cannot however be expected if the Government intervenes and takes upon itself to protect the ryots by fixing the instalments on which and the dates on which the rates are payable. Zemindars will then very naturally look upon the ryots as proteges of Government and not their *own*, and will often think of justifying themselves as entitled by law to sue at the termination of each period of instalment, there will thus be an increase in the number of rent suits rather than a check upon litigation.

Boards' rule being an additional element over and above *custom* or *agreement* will do far more to complicate than simply the decision of rent suits.

XXIII. The provisions for distraint will not serve the purposes of the present law on the subject, inasmuch as they will be attended with loss of time, work and money, and will give the ryot

every oppotunity of removing his crops before the distraint order reaches the village. Recourse to a distant court above all is not to be recokned as a trifle and for this alone landlords will seldom exercise the power of distraint. The result of the proposed law therefore, would be to increase the number of rent suits and in a way to abolish distraint altogether.

With regard to abolition of the power of distraint proposed in a former draft of the Bill by the Rent Law Commissioners Babu Pearymohun Mookerjea (one of the Commissioners) wrote as follows:—"The provisions for the distraint of crops are very widely resorted to by the landholders for the recovery of their rents, to enable them to realize their rents at the proper time simply by the threat of coercive measures without putting the legal machinery into action while they save the ryots the loss of time, work and money attendant on suits for arrears of rent The landholders have seldom the motives to abuse the power vested in them and as a matter of fact the power is seldom abused. The heavy penalties provided in cases of the abuse of the power are effectual deterrents against wanton oppressive distraint, law gives the ryot ample compensation for any loss sustained by him. The process of distraint is a mode of proceeding which has taken root in the minds of landlords and it is regarded by them as the most effectual means for the easy and timely realization of rents from a body of men who are known to be generally improvident, who would be ultimately injured rather than benefited by the abolition of the process The reasons given for its abolition are based on incorrect and insufficient information and they do not justify a change in the law which will be a misfortune alike to zemindars and ryots." We might here to this remark add that the process of distraint *has taken root* not only in the minds of landlords but in the minds of ryots also. Both the zemindars and ryots have begun to know the law and there is hardly any complaint by the ryots that the law of distraint is an instrument of oppression at the

hands of their landlords. Such being the attitude of the landlords and ryots towards the present law on the subject it would be most undesirable to effect any change and to make distraint really a form of attachment before judgment, which should in very many cases take the place of a suit altogether."

Sec. 167, sub sec. (2) "Every such application should be liable to court fee." Why should such applications for distraint require court-fees, and why should the zemindars be burdened with such costs as well as with the expense of paying lawyers when under the present law he has practically no expences to incur at all?

Sec. 181, sub sec. (4). The power of distraint being only valuable as a mode of speedy realization of rents, sec. 181 sub-sec. (4) would frustrate every object of the law inasmuch as it would allow the money advanced under the section to remain in deposit in the court for a period of at least *one month*.

XXIV. One appeal ought to be allowed from the decrees or orders of Munsiffs in suits in which the amount claimed does not exceed Rupees fifty. Munsiffs are hard worked officers—and considering the number of rent ruits they have to decide, it means no disparagement to their ability to say that failure of justice is possible in very many cases.

XXV. Improvements of a permanent character as well as improvements which form no part of the ordinary processes of good husbandry are seldom effected by the ryots. In Bengal it is the landlords who always take the initiative and help the ryots with pecuniary aid towards improving the agricultural conditions of their fields. As with agriculture, the landlords also seek the ease and welfare of his tenants by contributing largely towards the construction of roads, excavation of tanks, establishment of schools, dispensaries and hospitals and other material improvements calculated to promote the general welfare of the tenants of his villages. It now remains to be seen for what improvements are the ryots to be compensated. Certainly they will get no

compensation for the banks they might erect between two fields or the *cancha* wells they might dig for temporary purposes. The improvements must be substantial and of such character that the landlord will reap benefits from them when the ryot leaves the land. But to judge of what is improvement in each individual case for which the landlord will reap benefits in *future* will not be an easy matter of determination for the law courts. It may therefore be respectfully suggested here that a ryot should be entitled to compensation only for those improvements (1) which he has himself made and (2) for which he has given his landlord an enhanced rate. If such a provision for compensation is made the landlords will at all events know what it is for which he is to pay a price in ejecting a tenant by lawful means.

The ordinary ryot in "Central Provinces Tenancy Bill" is not protected from an enhancement arising out of the improvements which he himself has made. Why should the ryots then of the lower provinces of Bengal be placed on a better footing at least regarding this point?

As regards compensation for disturbance the main argument that may be urged against it, as the Viceroy has told the Council, is that it is unknown in India, certainly the system is a novel one not only in this country but in the civilized countries of the West. The only precedent is to be found in the Irish land law—and the experiment was tried in Ireland for the first time in 1870 with no good success. It was rather a failure, the right under which the ryot will claim compensation under this provision will be the "right of his plough" only.

With regard to compensation for disturbance Raja Siva Prosad expressed himself in the Council as follows:—"Then the Zemindar is to pay for his own land to an occupancy tenant who does not pay his rent and falls into arrear in the shape of price: here a *budmash* comes and clandestinely ploughs and sows a piece of land upsetting all the plans of the zemindars

and receives money from him in the shape of disturbance money for restoring the Zemindar's land to the Zemindar. I have heard of the right of the sword but this will form the right of the plough."

XXVI. The transferability of the occupancy tenures is being very gradually recognized in the Nuddea district; but with the growth of the custom, however slow it may be—there happen cases in which the landlords' consent has not been obtained before-hand. For this however the Zemindar seldom objects to the transferee being recognized as his tenant unless the transfer seems to be with a motive to annoy the landlord. To make therefore the status of a transferee rest upon a rigid legislative basis as provided for in the present Bill would be to take away from the landlord the option of disallowing the objectionable and hostile tenant into his lands and to give to the ryots very little power over and above what they already possess under custom.

XXVII. The present procedure for the recovery of rents must be admitted on all hands as dilatory and inconvenient. In this direction however the Bill makes no provision for facilitating the collection of rents from the ryots. All that the Bill does is to make the ryots secure in their possession and all that the Legislature points out to the landlord as security for the recovery of his rents is a hopeful tenantry. By holding out to the landlord the prospect of a good tenantry the Legislature would also have us believe that the thriftless habits of the Bengal tenants will no longer be possible if the present Bill comes into operation. The consequence however remains to be seen and which, one is afraid, would always be the reverse. It is desirable therefore that instead of negative some positive enactment like the following should be made to facilitate and secure the collection of Zemindars' dues:

(I.) Without having recourse to suits instituted in regular form a landlord may be allowed in the first instance to file an application which will be considered to all intents and purposes as an applica-

tion for execution of a decree, and the notice served in consequence thereupon would be in the nature of notice in execution cases requiring the ryot to show cause why the regular processes of attachment should not issue against his property. If the ryot does not come forward and object then on sufficient proof being given of the service of the notice attachment processes would issue against him. On the other hand if the ryot opposes the application with objections the application may be allowed to take the form of a plaint in regular suit on mere payment of proper court-fee stamps. Of course in the first instance the application should not be made chargeable with court-fees to the amount of more than what is necessary for application in execution of decrees. If such a procedure is adopted there will be saving of both time and expense on the part of the ryots as well as of the zemindars, and a real facility afforded towards the realization of undisputed arrears the court having had to proceed in respect only of disputed cases.

(II.) The *putni* procedure regarding summary sales may be made applicable to occupancy tenures also. There is no reason to say that the *Patnidar* is in a better position than the ryot " to be able to save himself from injustice or obtain redress for it afterwards," since the right to transfer his holding is now being given to him.

The legislature as has been observed by making the occupancy right saleable in execution of a decree transferrable and heritable gives the holders of the rights little or no power in addition to what they already possess. It would therefore be not very easy to understand how the legal recognition of the sale of occupancy rights " gives the landlord the best security for recovering his rent."

(III.) On a suit being instituted the court may call upon the ryot at least in cases where the question of title is not involved to deposit in the court the amount of rent claimed from him before the case is proceeded with and the defendant is called upon to file his *written statement.*

Notwithstanding its prestige, its Police arrangements and other innumerable advantages the Government still considers it necessary to have recourse to summary procedure for the realization of its revenue. Would it not be therefore fair on the part of Government also to allow these private zemindars whose properties are liable to be sold under the Sunset Law some such summary powers enjoyed by itself? The zemindars of these days are moreover beginning to keep books and accounts in a very satisfactory manner, and considering the education they are now receiving any power that might be vested in them is sure to be exercised with great discretion and considerable caution.

FROM MR. C. TWEEDIE,

Jessore.

I have read the Tenancy Bill over carefully and am struck with dismay at its contents, a more unjust and arbitrary Bill, and one calculated to widen the breach between landlords and their tenants, and gradually stamp out the former could not well be drawn.

The injustice of the expression which runs throughout the Bill "notwithstanding any contract to the contrary" is so great that I cannot believe it will ever be sanctioned by any lawmaker who gravely considers the matter, to do away with contracts (terms of tenure) and there are many, which have been legally made and duly registered, and which have greatly tended to calm down the differences which arose by the passing of Act X. of 1859, will upset all that has been done during 24 years by those Landlords, who have given attention to the management of their Estates, and will also so unsettle the minds of the tenants that the consequences are likely to be very disastrous.

If existing contracts are not upheld it will tell particularly hard on European tenureholders, who have paid much attention to settling their estates, and I presume they are not included

in the description given by the Government of India in paragraph 85 of their letter No. 6 of 21st March 1882. If they are included I would recommend the Government to adopt the more open and fair policy of offering to give them compensation to quit the Mofussil, making over their properties and Factories to the Government, an experiment which could be easily carried out in the Presidency circle, where but few of the Indigo Planter landholders remain, rather than gradually but surely stamp them out by the introduction of such a Bill as the Bengal Tenancy Bill, with its arbitrary and retrospective clauses.

The Framers of the Bill have evidently no knowledge of the people and requirements of the country, they have but one fixed object in view the annihilation of the landlords.

There is nothing in the Bill which will facilitate the collection of rents and very little that will really benefit the tenant class.

In its present form the Bill, is calculated not only to ruin the landlords, but in no way will it better the agricultural population. What a landlord wants is a fair rent for every Biggah of land within his property, except for such as has been settled at lower than fair rates by the liberality or folly of his predecessors, by special Pattah, and a speedy mode of realizing his rents. In this district what is called the Pergunnah rates have been long established, and the prices of produce have greatly risen of late years. I believe the landlords would be content to accept those rates, provided they were supported by Government in getting rent for every Biggah of land. What a tenant should get is the land he holds at a fair rate for Biggah without any illegal private cesses being levied from him, that fair and equitable rates did at one time exist there is no doubt, and the process of adjustment of rent in accordance with the quantity of land held went on between landlord and tenant, till the passing of Act X. of 1859. Since which time there has been nothing but confusion, and the landlords have in many instances been obliged to submit to great reductions in their rent rolls, while tracts of land which were

in jungle are now all cultivated and the lands belonging to *Polatoka jummahs* are nowhere to be found, they having been annexed by ryots who are supposed to hold *jummahs* at fixed rents. This confusion cannot be rectified except by an enactment entitling landlords to measure the lands and adjust the rents of their tenants frequently, the present usage which has sprung up since 1859 of a "right of occupancy tenant" holding his *jummah* at a fixed rate irrespective of the quantity of land he may hold or however he may have got possession of a portion of it, is unjust to the Landlord and contrary to sound policy of Government. If a tenant is entitled to hold permanently a *jummah* of 20 rupees let him have measured off to him the quantity of land which that sum would represent as the rental of that land, at the Pergunnah rate, anything he wishes to hold in excess of that quantity he should pay for. This was the position in which they were previous to 1859, when through the carelessness of the landlords in not looking after their interests and legislators not knowing the effects that would be produced, Act X. was passed. There is no reason now that all parties are pretty well acquainted with the question and a new Bill is about to be introduced that the landlords should not use every effort to have their rights restored, and sections which are decidedly unjust to them removed. Undoubtedly where tenants have received lands from their landlords from favor or other cause at lower rates than what might be considered fair and equitable, those Pattahs should be respected, but they ought to be defined by boundaries and the quantity of land granted, but if Pattahs given by Landlords are to stand good, so should engagements entered into by the tenants hold good, and not be subject to be cancelled wholesale as proposed in the new Tenancy Bill.

Secs. 5 and 7 to 13. In this district there was a quantity of *thamar* land in every village, a deal of which has been absorbed or taken possession of by ryots, thereby making a ryot's holding larger than it was at the time of settlement, when he was supposed to hold 1 Biggah of *matan* land for Rs. 1-5-3, would it not

be better to define the ryots' holdings, charging them at the very old established rate of the Pergunnah for each Biggah they claim as belonging to their tenures and the balance be considered *khamar*. It is now impossible to define *khamar* without defining the ryots' tenures at the time. I do not suppose that many landlords mind whether lands are *khamar* or *ryotty* so long as they get a fair rent for each Biggah of land, but there is no doubt that all that a ryot was originally entitled to was 1 Biggah for Rs. 1-5-3, anything he may hold which *reduces his nirik* has been got by absorbing the landlords' *khamar* except in case of special Pattah.

Secs. 14 to 18. Except under special pattah given by the landlord no ryots had any right to hold at a cheaper rate than the Pergunnah rate and every ryot should be assessed at that rate who claims to hold at an unchanged rate from the Permanent Settlement, such lands as he holds in excess have been absorbed from the Landlords' *khamar*. The above is according to the special custom of the district and would be understood by both landlords and ryots.

Sec. 22. If a ryot was entitled to 5 Biggahs @ 1-5-3=6-10-3 and has absorbed 10 Biggahs of the landlords' *khamar*, total 15 Biggahs, there seems to be no reason why his rent should not be brought to Rs. 19, 14 annas and 9 pie instead of double as proposed *viz* 13-14-6 which is in accordance with custom.

Sec, 24. In a country where it is so difficult to ascertain the exact quantity of land held by a ryot, there seems to be no reason why enhancement should not take place, as often as lands can be shewn to be held in excess of what was supposed.

Sec. 38 to 42. There seems to be little use in demanding security from the purchaser of a Putnee holding as a ready remedy can be found to recover the rent due by an *austom* sale, and considering that a Bonus of 3 to 4 years rental is usually paid for a Putnee, the security of the holding seems ample to meet the needs of the Zemindars.

Sec. 45. It seems to be unjust to give a man a right of permanent occupancy who has contracted with his landlord that he shall not acquire such a right, what would landlords and tenants in Scotland say to such a proposal where leases are usually of 19 years ? unjust !!

Sec. 46. If a ryot does not lose his status till a year after he has absconded, who is to pay the rent of the holding for that year ?

Sec. 47. This is a section rather unintelligible, especially the proviso; but it is evident that special contract is to be null and void.

Sec. 48. This seems to be a useless section as according to previous sections a tenant is to acquire an occupancy right without its being granted to him.

Sec. 49. This is what has taken place; the ryot has absorbed *khamar* land into his holding, but it was never supposed that he has acquired a right of occupancy in the excess lands, and he is generally too glad to pay for the excess lands at the Pergunnah rate, and have them joined on to his holding when he is found out.

Sec. 50. This section to override contract is unjust and quite contrary to custom. I held a house and land in England and I was bound by my lease not to sublet, cut trees, nor break up pasture; had I infringed any of the conditions of my lease, I presume an injunction would have been taken out to prevent me, and justly too.

Sec. 51 to 57. When a ryot has hitherto had no transferable right in his land, except that given to him by an arbitrary law which proposes to override all written contracts and old established custom, it is not likely that a landlord would care to avail himself of the right of preemption and to find himself in the position described in section 56 by which he would have spent his money and be in the same position as he was before.

Sec. 59. It is unjust that a Revenue or Registering Officer should interfere between two parties contracting, or arbitrate as to what should be, unasked; it is surely sufficient that the parties contracting are satisfied, and that the Registering Officer is satisfied as to the indentity of the executant and that he knows the terms of his contract.

Sec. 61. This is decidedly unjust, it would be better to say that ryots are not competent to contract, and that no contract would be binding unless made by a Government Officer as the guardian of the ryot.

Sec. 72. When Government officers with an expensive staff undertake to draw out tables, unpetitioned for, it seems hard that the occupancy ryots and the landlord should be called on to pay their salaries.

Sec. 74 (2). It seems difficult to understand why a contract should be binding on a landlord and not on a tenant.

Sec. 76. Double or any other proportion seems to be arbitrary; it would surely be more equitable that rent should be paid at a fair rate for each Biggah acknowledged to be held, whether it should be an increase of quarter, double, or treble.

Sec. 78. It is surely fair that a fresh suit for enhancement should lie whenever just cause arises, such as it being ascertained that more land is held by the ryot than what he is paying for, and which by collusion or mistake was wrongly measured, or where 4 biggahs were reported to the landlord as within the ryots holding when there were actually 6 biggahs. In a country where corruption is so rife, 10 years is a long time to wait to have an error rectified.

Sec. 79. When a ryot is allowed to sow what crops he likes without consideration, as to their being exhaustive or not, and uses no manure to replenish the land and has bound himself by contract not to ask for a reduction, it is unjust that he should be able to go into Court and claim a reduction when the land has become exhausted by his bad farming and the landlord has

been prevented by law from having any say as to the rotation of crops. Rotation of crops so as not to impoverish the soil, as also a clause about manuring are strictly looked to in all English Leases.

Sec. 86. This section is surely not in accordance with English Law.

Sec. 98. This Section would come very hard on tenureholders, many of whom are bound by contract to pay to their superiors by monthly instalments. Where is the money to come from if not from the tenants from whom it has always been customary to collect by monthly kists, and many of whom are bound by special agreement to pay in such kists.

Sec. 125. In this case it would be necessary for the Court to serve a notice upon the landlord intimating that a sale for a money decree had taken place to enable the landlord to make good his claim for such arrear of rent as might be due to him.

126. Ryots are not in the habit of making improvements in this district, if one ryot wished to do so he could not on account of his lands being mixed up with the lands of other ryots.

Sec. 140. According to this section the holding must be fallow for one year and the rent lost.

Sec. 166. Distraining produce of the holding through the medium of the Court would be useless as regards facilitating the collection of arrears, and would only result in the crop being wasted; what is wanted is a summary procedure by which a decree may be obtained and either the moveable or immoveable property of the defaulter sold without delay.

Sec. 193. A short limit should be given as to the time within which the suit must be heard and finally disposed of.

Sec. 194. The Post Office would need to increase its delivery Establishment.

Sec. 198 (*b*). There being no appeal is a bad principle, an appeal has a great effect in keeping an Officer from taking an one sided view or being arbitrary in his judgments.

Sec. 211 and 212. A sale subject to incumbrances will never answer and it will only cause unnecessary delay in the time allowed for postponement.

Sec. 217. 3. No suit should be entertained to set aside a sale unless the arrear for which the sale took place with costs is first deposited in Court.

I beg to point out a great injustice which is frequently sustained by landlords in the disposal of rent suits and which is quite opposed to the acknowledged principle that a ryot should hold his land at fair and equitable rates.

A Landlord sues his tenant for arrears of rent at a jummah of Rs. 20, who replies that he holds only a Rs. 10 jummah, and in the absence of a Kabuliat or other good documentary proof (*jummah wassil bakees* are not accepted) the case is decreed at the rate of Rs. 10 which the ryot admits. The landlord has no redress but must continue ever after to collect Rs. 10 instead of 20, the amount he had been previously collecting from his tenant, and the tenant will hereafter use every means he can to absorb as much *khamar* or "polatoca" land as he can into that 10 rupees holding.

It is even possible that the tenant may produce an old Foysulla shewing that he held formerly a jummah of Rs. 10, but there is nothing in those old Foysullas to shew the quantity of land he held; the probability being that he was not entitled to 7 Biggahs or thereabouts, including his homestead for Rs. 10; and the probability is that he is now in possession of 20 Biggahs or more, the balance over seven Biggahs having been abstracted from "khamar" or "Polatoka" (absconded ryots) lands. The fact being that when on measurement he was found to hold more land than he was entitled to for Rs. 10 he willingly paid —extra, and his jummah had thus been gradually brought up to Rs. 20, but no registered Kabuliat having been taken from him, he takes advantage of the pulling of the Law in his favour, falls into arrears, so that a suit may be brought, files his reply and has

his holding fixed at Rs. 10 for the future. It would surely be but fair and equitable in such a case, where there is no documentary evidence defining the lands that the Court should order the lands which the tenant claims under his Rs. 10 holding to be measured, and give a decree according to the Pergunnah rates.

FROM BABU. ISHAN CHANDRA CHOWDHURI AND BABU KALI MAHAN MOOKERJEA,

Managers of Joogidia Estate,—Noakhally.

A mere perusal of the history and the statement of objects and reasons of the Bill under consideration leads us to think that the real justification of the Government in introducing the Bill into the Legislative Council is the reservation of its power to do so in Section 8 of Reg. I of 1793, to which is added by the member in charge of the Bill the general power and duty of the Government of an agricultural country like India to legislate from time to time, as occasion might require, for the protection of the inferior occupants of the soil. As to the former, it seems to us that all that the Government could and did intend to do was to reserve to itself the power of legislating for the *protection* and welfare of *taluqdars ryots* and *other cultivators* of the soil. Now let us see what was and could be meant by the clause "*protection* and welfare" and who were and could be meant by the phrase "*taluqdars*, ryots and other cultivators of the soil." Now the word "protection" presumes the idea of *pre-existence* of the thing to be protected, and this fact alone clearly shows that the framers of the said Reg. had before them the cases of the *taluqdars* &c., who were then actually holding lands under the proprietors with whom the permanent settlement was concluded. By no force of our imagination or the stretch of reasoning can we incorporate into the word *protection* the idea of *creation*. Having recognized the proprietary rights of those persons with

whom the Permanent Settlement was concluded and having confirmed that position by solemn declarations and pledges, our Government could not be so inconsistent and unreasonable as to deceive the people by a mere show of that right while keeping it virtually at its own disposal. If that were the intention of the Government then certainly they would not have failed to insert the words "creation of the rights &c.," before the word *protection* in the said section 8 of Reg. I of 1793. We find an exactly similar expression in the instructions of the Court of Directors sent to the India Government immediately before the Permanent Settlement. Thus we see from the use of the word *protection* in the said two documents that all that the Government intended to do was, not to force tenants upon the proprietors against their will and make the former share with the latter in the proprietary right to the soil as the Bill proposes to do, but to intercede for the rescue of the tenants when the landlords, having of their own accord, brought them into their land under certain conditions agreed upon by both of them, subsequently turn round and arbitrarily deal with them, in which case only Government is justified in prescribing both a remedy and a preventive one for the sufferers. By the legitimate exercise of this power Government enacted Section 51 of Reg. VIII of 1793 limiting the enhanced demand of the proprietors upon their dependent *taluqdars* &c., existing at the time of the Permanent Settlement. Later on in 1859 Government thought it proper to protect further the aforesaid tenureholders and exempt them altogether from all liability to enhacement provided they can prove uniform payment from the date of the Permanent Settlement and with this view Sections 15 and 16 of Act X of 1859 were passed. Similarly Sections 3 and 4 of that Act X were framed to protect the ryots of similar description from the liability of rent enhancement. Against these provisions of the law, we believe, no voice is or has ever been raised by the landlords of this Presidency; for that was the legitimate exercise of the said power both as regards the persons

for whose benefit (that is protection) they were made, as well as the nature of such protection given them which did not at all collide against the proprietory right of the real *Malik* of the soil. However, we think we cannot in the same way defend the Government for Section 6 of Act X of 59, creating for the first time the right of occupancy which, in our humble opinion, is one of the several modes of enjoying the proprietary right to the soil, and as such it was made in open violation of those solemn declarations made by our then rulers. The only ground of its defence at *the present moment is the fact of proprietors submitting to it for* nearly quarter of a century by which time it has become an established institution of the country recognized by all the parties concerned. We do not propose to have any change in the matter. But at the same time we must say that if one unjustifiable interference on the part of the ruling authority with the admitted rights of one section of the subject race without much or any opposition, is the only ground and defence of the same authority for many more interferences of an equally unjustifiable character, then the less we talk of them and the sooner they are dropped the better for both the governor and the governed. Let the supporters of the Bill say what they like our Government would no doubt be ashamed of such arguments in its defence. Thus it will be seen that all that the Government of Lord Cornwallis could and would, and as a matter of fact, did reserve to itself by the said clause in Section 8 of Reg. I of 93 was a power to legislate for the *protection* of the ryots &c., which again as shown above refers to the procedure and not to any substantive law regarding the dealings of the landlords with their tenants.

As to the additional ground on which the member in charge of the Bill seems to have based it namely "the power and duty of the Government of an agricultural country like India to legislate from time to time, as occasion might require, for the protection of the inferior occupants of the soil," we submit that to be con-

sistent with the recognized ownership of those with whom the permanent settlement was concluded, the word *occupant* must be made to mean only those persons who have been allowed by the proprietor so to occupy the lands, and not those whom it is proposed to force upon the landlords against their will, for the simple fault of their permitting them to hold the land on the distinct understanding for a limited period and under-specified and definite conditions as agreed upon by the parties. The whole Bill from beginning to end seems to have been drafted not only from the ryots point of view, but as if it were with a view to wreak vengeance upon the landlords. You will no doubt bear us out in this assertion of ours when you depict to yourself for a moment the position of the ryots and that of the landlords under the Bill under review. The former has been delineated by the gentle brush of the great painter as an emblem of innocence and simplicity, denuded of every natural sagacity to understand his own rights and privileges and apt to be easily deceived at every step and in every transaction with his landlord and therefore physically and intellectually disqualified for making any contract to his advantage with, if not all persons, at least his landlord. The ryot puffed up with the vain idea of his being the real pillar of the estate, the most important corner stone in its edifice and the principle and main spring in the whole machinery, lifts up his proud head to the heavens and holds fast with his revengeful grasp the locks of hair of his much envied landlord close to his feet teaching him the lesson "trust not your prosperity to be everlasting." On the other hand we find on a rough canvass the likeness of the landlord, high and tall in stature, born out of the ashes of the forefathers of the ryot, with eyes beaming with intelligence, shrewd in character, unscrupulous in his dealings, mercilessly unsympathizing like Shylock of Shakespeare, once tyranizing over his tenant but now lying prostrate before him in a suppliant posture with locks of his hair tied round the feet of his once subordinate ryot now

inexorable lord beseeching this ever-needy and therefore fastidious demi-god of his very existence, to make a free use of his lands at any rent, of pepper corn or no rent whatever, as will suit his pleasure and convenience. We have no doubt that you have shown sufficiently well in your speech in the Legislative Council that the proprietors did in no way betray the trust reposed in them by the Government in 1793, as to merit the reward proposed to be given to them. If such cogent reasons and convincing arguments supported as they are by facts and figures do not persuade the Government either to drop the Bill altogether, or remodel it thoroughly, we do not know what will. We are by our education and training not quite competent to deal with the varied aspects of the different momentous questions raised in the Bill affecting both landlords and tenants, on the proper solutions of which depend the entire well-being and prosperity of the country. The whole body of landholders seem to be quite innocent of all that is taking place anent their own existence; for, we do not see sufficient protest has been made by them to the Government against the Bill though it is lying before the public for a good length of time. In conclusion we beg to draw your special attention to the following most objectionable Sections of the Bill *viz* Section 45, 47, 50 clause (*f*), 56, 59 clauses (1) and (2), 61 clauses 1 and 2 taking along with Section 79, 90, 119 and 202 clauses 1, 2, 3 and 4 of the Bill and ask you on behalf of not only the big zemindars but also of the vast majority of the tenureholders of all denominations above the rank of a mere ryot, to protest most strongly against them.

FROM BABU KISORI LAL GOSVAMI,

Serampore.

The new Rent Bill if passed into law will be a piece of officious legislation so far as the ryots are concerned. It has been suggested in the teeth of several official revelations to the contrary that

the operation of the present Rent Law has ground down the Indian peasantry into a state of hopeless penury and remedial measures have been embodied in the form of the Bill in question by such Counsellors as are more imaginative than humane. The ryots, as a matter of fact were never clamorous for relief except while the Bill was in transit through the Bengal Council. The zemindars on the other hand made repeated representations to Government for some summary measures for the realization of arears of rent and thus saving them from law's delay. Well might the zemindars now say to Government in the strain of the beggar in the fable, take back your proposed relief and recall your Bill. The Bill is characterized by extreme onesidedness. It will not only be detrimental to the pecuniary interest of the zemindars, but will be subversive of their power and prestige. Portions of the Bill have been framed in the light of the Irish Land act though it is extremely doubtful how feasible it would be to graft exotic legislation on the Indian branch of her Majesty's dependencies.

I would leave the difficult though all important question, whether the present Bill is a direct violation of the permanent settlement or not, to eminent jurists. I must, however, say that we share in the sentiments of those celebrated lawyers, amongst others allow me to mention the names of the Chief Justices of the Calcutta High Court who have expressed then unqualified disapproval of the Bill, as a violation of the solemn pledge given to zemindars. The Permanent Settlement satisfied all the conditions of a valid contract as contemplated by the Indian Contract Act. It ought to be looked upon as a contract entered into between the Government as represented by lord Cornwallis and the zemindars. The present Bill aims at a redistribution of land which is a direct infringement of the Permanent Settlement. The supporters of the Bill seem to think that they have cut the gordian knot of all legal difficulties in the way by pointing out Art 7 of Reg. 1 of 1793.

The apostles of the ryots may say what they like, I can safely say that no zemindar ever dreamt that a breath would unmake what a breath had made, that any subsequent legislation will unsettle their position. The Bill cannot, though other circumstances may, materially benefit the agriculturists or secure prosperity to them, for the Bill will set both the zemindar and the ryots by the ears. If in the long run there be lasting peace established between the two classes, the means by which the Bill seeks to attain that end will foster litigation so much that the consequence will be that the zemindar will be weakened and the ryots crushed. The Bill benefits a third person who is neither zemindar nor agriculturist, namely the middleman. I for one disclaim all sympathy with persons who fail to see or rather would not see that the condition of ryots is one of growing prosperity. On the other hand the two classes are every day becoming more and more friendly. The days of fabulous oppression on the part of the zemindar are gone and I hope gone for good. It is always to the interests of the zemindar to see the ryots rise in prosperity which is a safeguard against arrears. Such measures as would secure real prosperity to the ryots cannot but be welcome to the zemindar worth calling such, provided it be not at their expense.

FROM BABU KALLY COOMAR ROY CHOWDHURY,
Barripore.

From time immemorial when the Englishmen had no existence at all, up to the present date the zemindars have all along been considered as the sole proprietors of the soil. Though considerable changes have taken place in the administration of the country still the rights of the zemindar remained the same. As it befel the lot of India to be under different Raj at different times the zemindar only paid revenue to the ruling power. But it is now that the zemindars are told that they are no body and that the rights which they enjoyed are no longer

theirs but belong to the ryots and that they are mere collectors of rent.

I am exceedingly sorry that after a most careful study of the Bill I am unable to trace out any valid reason which has induced the Government to introduce it. I admit, and it is maintained by all landholders that greater facilities should be given for the recovery of rent. The Bill has come upon the zemindar as a thunder-bolt.

The relation between landlords and tenants at the present time is certainly not such as would necessitate any special legislation on the part of the Government. Again, even if it was found that the relations between landlords and tenants were not friendly and that special legislation was absolutely necessary, still it is not fair on the part of Government to look for the comfort of one class at the expense of another. In 1793 when Lord Cornwallies made his celebrated Permanent Settlement with the zemindar he did not even dream that his more illustrious successors would upset all his doings at a time when it was the duty of every Englishman to see them carried into effect. If the English Government wish to command the respect and admiration of all the civilized nations on earth it should be their first endeavour to carry out to the letter the solemn pledges of their predecessors. The line of action which the Government of India has chosen for the last few years is any thing but creditable. It has become almost clear to all the zemindars that Government cannot any longer brook the idea of allowing the zemindar to enjoy the blessings of the Permanent Settlement. The passing of the Road Cess and P. W.. cess Acts has already taken away the confidence of the landlords and the introduction of the present rent Bill is but another means of driving the zemindar to despair.

FROM MR. M. B. MORRISON,
Bhagulpur.

1. I have not the *Khasrehs* of all my villages—of those I have, only a few would show the areas of Kamut, or nij-jotes—

these last, have been gradually absorbed in the *mal*, if and where, they existed at all.

2. It would be utterly impossible to fix the areas of those lands—you call them "*Khamar*"—at the present day. I am opposed to the principle of Section 6 of the Bill.

I would take the opportunity to bring to your notice, that in Behar, at any rate in the district of Bhagulpur the true "*Khamar*," has not the same wide signification, that it seems to have obtained in Bengal, through its having been employed (no doubt erroneously) in the early regulations, in view of *niz-awad sir, kamut, niz-joth, &c.*, "*Khamar*" in Behar, means merely a threshing floor or the land used for treading out grain, in a village. After the forest and fallow lands of a mouza had been *awad* (both cleared and cultivated) they were marked off into *baheears* and then subdivided into *jotes*. But in the centre of these *baheears*, a piece of land used to be reserved for the common use of the community, as a threshing floor techincally named the *Khamar*. *No* rent was ever charged for this land—it was the zemindar's own *khas* and was reserved by him for the convenience of getting the produce of all the surrounding jotes together in one spot for the purposes of collection in kind, or in cash. It would be entirely impossible at the present day to find out the original extent or whereabouts of these *Khamars*. And as for the *niz-awad* of the zemindar, in a jungly district like Bhagulpur, it consisted of all that land, minus of course the area under actual cultivation in 1793, which had been cleared and brought under cultivation with the zemindar's labour or capital, after the Permanent Settlement of the district. It would be impossible I think to define the *niz-awad* too, at the present day.

3.—In only a single village but, of 14 in Taluk Sherfudinpore, is the zemindary Kamut or niz jote traceable, and that is owing entirely to its being connected with an old indigo factory of the proprietor, in the village.

4.—I know of no custom, usage, or tradition, that prohibits a

zemindar—from converting any *ferrari, babutbarri, sarkar-parti, or hal barrari,* or any other description of unoccupied village land into his Kamut, or *niz-jote*—"*khamar*" as you call it. There is no custom, &c., in existence either in this district, or in Behar, that would entitle a *ryot* to claim any such vacant, or unoccupied land as his, and against his zemindar.

5.—I do not hold any such land as you speak of. Malikana is paid by me in a *Sakhiraj* village (is n't that peculiar,) in Perg. Foolbari in the District of Patna, to the maliks on the aggregate collection—the maliks have nothing to do with the *land.*

6.—I do not as zemindar claim any higher proprietory right on account of unoccupied *khamar* land, than on account of unoccupied ryoti land: the right is the same in either case.

7—The effect in my District has been to create a lot of jotes, claiming existence from the time of the Permanent Settlement; but which I honestly believe never existed then! The 20 year's rule made room for any amount of fraud, perjury and corruption among ryots and the putwaries, and has served to keep honest landholders out of their just and legal demand for enhancement. I do not observe any modification or improvement of the aforesaid rule in the new Bill with reference to permanently settled estates in general, but of course the Government Khas mehals are protected. But then Government can as easily be its own *ma bap* as ours whenever it chooses to do so.

8.—It would be very difficult—I should say almost impossible to prove the right to enhance the rent of a tenure falling under Section 18 of the Bill, where clause (*a*) did not especialy help. The quinquennial, the putwary's, the Income Tax, the R. C., papers, and even prior Judgments of Courts showing that the sum totals, had buried, would all go for nothing if the ancient rates had been altered, and where clause (*a*) aforesaid, did not help. Unfortunately Section 18 (with reference to the presumption in Section 15) does away with the only saving clause, for poor hard pushed

zemindars, contained in the 4th Section, Act VIII of 1869, which says, "unless the contrary be shown," and so forth.

9.—I cannot make out the full scope of this question, so it is useless answering it by guess.

10—Tenures with fixed rents from the time of the Permanent Settlement have thitherto enjoyed the previlege of sale and inheritence in this district like other immoveable property; there can be no objection to the continuance of the right of course, but if preemption is to be incorporated into the Bill in any form, why may it not be extended to the *Mouroosi* tenures as well?

11.—The provisions contained in the Bill—from Section 27 to 35,—where the right to transfer especially is not questioned, seem to be pretty fair; and where the right is questioned the zemindar can give his reasons for refusal; and the other party can have the matter tried elsewhere. This also is unobjectionable, I think.

12.—This (Section 45) is one of the most objectionable sections of the Bill. It will by over-riding existing contracts and mixing up jotes of sorts and sizes in estates, not only cause confusion and mischief among men and *shexestas*, but what's worse still, it may extinguish for ever, the little freedom and distinction, that Government gave to *zemindars* in the province of Behar. In the District of Bhaugulpur, at a rough estimate, the measure will convert 9-10 of existing ordinary, and non-occupancy jotes into occupancy jotes which jotes will be a perfect calamity to most of us.

13.—The provision of Section 46 is not bad for zemindars; but still I am open to any correction.

14.—Most certainly Section 48 is objectionable. Why should a zemindar be bound to guard by written contract, that which is admittedly his own? Then again, if instead of holding the jote (khamar) as a zemindar, he held it as a ryot, would his under-tenant koortalidar—I mean the ryot's under-tenant, be allowed to acquire an occupancy right adverse to his principal? I think

not, and why? Firstly because the measure would be considered unjust; and secondly because the subdivision and extension of the occupancy right from tenant to tenant would create such a machinery, of "wheels, working within wheels," that in the end the whole concern (by which I mean of course the revenue system of the country) would be bound to come to proof.

15.—There is no custom or usage, that I am aware of that *prohibits ryoti land from being let to tenants-at-will, by zemindary proprietors to the best advantage* even if the rates tendered by the tenants, and accepted by the zemindar, should happen to exceed the limits prescribed by law—if any! The wish of the framers of the Bill to take the entire *mal*, or ryoti land out of the hands of the *zemindar*, to prevent his giving it to the best man, for the best offer, is opposed to the right of ownership and covenant of Lord Cornwallis' settlement; and detrimental besides to the realization of zemindary dues, and the Government revenue.

16.—Looking, as many do upon the right of preemption offered by the Bill, not as an exchange at all—fair or otherwise, for some thing expected to be given up by the zemindar; but as the infliction of a most undeserved *penalty* on an innocent man; he would be weak indeed, and an object of pity were he to cease to object to the sale and alienation of all occupancy holdings on that, or any other account.

17.—The provision of Section 56 is neither reasonable, nor just! It is incompatible with the free use and enjoyment of ones property *twice* bought! It forces down a superior right to the level of an inferior one, and even lower than that. It is inconsiderate where it should be considerate and treats the master worse than his servant—the tenant better than the landlord, thereby engendering feelings profitable to no body.

18.—The limitation of the freedom of contract (Section 56) is neither desirable nor likely to do much good.

19.—It has always been considered better and safer for the subject to have his rights adjusted by the judicial, in preference

to the executive authority; some practicable difficulties however could be surmounted I think by the proposed tables of rates; provided that experienced revenue officers alone, be selected for the preparation of those tables.

20.—The landholder's share of *bhowli* produce does not in this District generally exceed a one-half proportion. But in the Patna-ilaka *bhowli* is often divided at 9-16 for the zemindar, and the remaining 7-16 for the cultivator. In the latter District perhaps, the new rule might retard improvement, *gilandazi* irrigation, &c.,; but in the Bhaugulpore District the rule is not likely to do much good, or harm, any way.

21—I do not know how the rule (Section 97) would bear on litigation. But when and where the Board has to fix the instalments, it should follow the *Kistbundi* on the Towzi, of each district.

22.—I am no hand at figures—afraid to try them through fear of falling into mistakes.

23.—The provisions of Section 166 take away certainly an historical and prescriptive right out of the hands of the zemindar, but what if we can gain any thing more valuable by parting with it? The new measures are more suited to the times, and practices of the fighting districts perhaps.

24—No. I do not think it is desirable to drop appeals in rent suits—small claims often represent very *heavy* interests, in the revenue courts: the knife might cut one way some times, as much as the other.

25—The "ordinary ryot" of Chapter VIII, is but a "twelve year occupancy" man, in disguise—protected very ingeniously by so many *clauses* of Section 90—putting it out of the power of the landowner to deal with this miserable case even at his own will, and with his own lands; the "tenant-at-will" of the old act is or was a far simpler and honest fellow to deal with or to be dealt by; and his status moreover was natural.;

26—Transferability in cases of *inheritance alone*, is recognized

in my zemindaries; and I believe such to be the practice throughout the District also; but we recognize no alienation of "occupancy jotes" in favour of strangers, in the District—of that I am pretty certain. As a rule, deaths and transfers come to the knowledge of the zemindar through the sherista putwary, and not directly from the ryots.

27.—I do not think myself competent to deal with questions of procedure or to suggest modifications and improvements in them. We leave the accomplishment of such things, to the care and wisdom of the British Indian Association, and its clever and zealous Secretary

28—Yes, I hold that "what is sauce for the gander is sauce for the goose"! why should there be two sets of law and procedure for the Nizamut and the khas mahal, in a permanently settled District? The status of the ryot and his rights, remain unaltered, whoever might own the estates—such would seem to me to be an equitable view of the khas-mehal ryots' case.

BABU SURJYA NARAYAN SING,

Bhagulpur.

In compliance with your request calling for an expression of the views of the Association on the Bengal Tenancy Bill introduced into the Vice-Regal Council I have the honor to state that the Association views its provisions with much dismay and is of opinion that they are a direct invasion of the rights enjoyed by the landholding class and think that it would be better in the interests of all classes concerned if Government could make up its mind to buy up the landholders than pass this law. The landholders in some parts of Bengal applied for a simplication of the law relating to recovery and enhancement of rent, but instead of granting what they wanted, the Government has thought fit to introduce a measure which aims at revolutionising the existing relation of landlord and tenant throughout the lower provinces

and gives to the tenants without any application on their part, rights and privileges of a very valuable character which at no period of known Indian history they ever possessed by taking them away from the landlord class.

2. The supporters of the Bill and a class of thinkers who are opposed to the Permanent Settlement of Lord Cornwallis, blame that noble statesman for having applied English analogies to Indian facts, but they are themselves more open to that criticism than Lord Cornwallis is, for the present Bill is mainly founded on Irish analogies sought to be applied to Bengal. The state of Bengal can hardly be compared to the present state of Ireland and yet an exceptional kind of legislation is proposed to be introduced into this country which can only be justifiable under circumstances of grave necessity. The three F's of the Irish land Act may have a charm about them but would the British legislature have introduced them into Ireland if its state was the same as happily is the state of Bengal and Behar just at present? It is said that the Bill is an attempt at restoration to the ryots of rights which they enjoyed at the time of the Permanent Settlement, but can any body who is acquainted with the history of land and landed tenures in this country vouch for the assertion that prior to the Permanent Settlement the ryots possessed the privileges and rights which the present Bill seeks to vest them with? When Act X of 1859 was passed it was considered to be a piece of legislation which conferred immense benefits on the tenant class and created rights in their favor which they did not at any previous time possess. It was declared to be the Magna Charta for the ryots and it was admitted by the staunchest supporters of tenant rights to be an encroachment on the vested rights of the landholding class; but within a period of a little over two decades from its passing it is said by a certain class of officials that the Act in question instead of being a boon and a Magna charta was a ource of injury to them. It is well known that the Civilian members of the Legislative Council which passed that measure

and the then Government of Bengal, were not inferior in knowledge of the history of landed rights in this country and the literature of the time of the Permanent Settlement or more backward *in the desire to ameliorate the condition of* the tenantry class, to some members of the Rent Commission to whose zealous advocacy the important provisions in the present Bill are mainly due. It is also a striking fact that if the legislature of 1859 committed a blunder as is said by the advocates of the present measure, that this blunder was not rectified when the Rent Law (Act 18 of 1873) for the North Western provinces was consolidated. On the contrary it will be seen on a comparison of its provisions with those of Act 10 of 1859 that with slight modifications arising out of local peculiarities, the main provisions of the earlier act were reaffirmed by the legislature when it was revised in 1873 for the North Western Provinces. Those who are in favor of the Bill should consider whether tenant right in Bengal was ever different from that obtaining in the North Western Provinces and whether as a matter of fact it was not less strong in the Lower Provinces where the ownership of the landholders in their estates was of a more complete character, and where the village system had long disappeared if it ever existed at all (Cobden Club Essay by Sir G. Campbell P. 236.)

3. Having briefly pointed out that no case exists for the interference of the legislature in the manner proposed, that the confiscation of the rights and privileges of the landholding class can only be justifiable under circumstances of emergency which have not arisen ; that the rights which the Bill proposes to confer on tenants are wholly new and that it effectually redistributes property in land, I proceed to remark that the Bill is open to the fault that it introduces uniformity throughout Bengal and Behar, where different rights exist in different parts of the same District, that it destroys freedom of contract and that it deals with arbitrary figures. The Rent Commission of whose deliberations the Bill is the result, did certainly devote a good deal of

time and attention to the elucidation of the law of landlord and tenant, but without disparagement of their labours or of the ability which they have displayed in the discussion of the subject, it may with truth be remarked that they did not proceed as Commissioners of like kind have elsewhere done by enquiring into the state of things as they actually exist in each district, or as they existed prior to the promulgation of Act X or the Permanent Settlement, and did not hear evidence before arriving at their conclusions. It is needless to state that the conclusions thus arrived at, however sound they may be, can never be exhaustive and ought not to have that weight and authority which deductions based on living facts and proved figures should command.

FROM RAJA PROMOTHO NATH ROY BAHADUR.

Dighapatea.

I as a zemindar of Bengal cannot help feeling alarmed at the unjust provisions of the Bengal Tenancy Bill introduced into the Legislative Council of His Excellency the Viceroy. As far as I am aware this Bill has been brought forward not in response to any application from the tenants for an enlargement of their existing rights; but because the landlords have been praying since some years for an alteration in the existing law to make fair enhancement of rent practicable, and its realization speedy; and successive Lieutenant-Governors have promised to grant both these prayers. If, however, instead of altering the existing law in these two respects in such a way as would make it useful to the landlords, Government proposes to curtail several of their existing rights for the benefit of the ryots; and, as I shall shew in Para 11 of these notes, to grant rent-free to the tenants all lands the rents of which they have been able to defraud the landlords for sometime past. But the words which have been said by several of our rulers and legislators since the introduction of the Bill into the Council have alarmed me more

than the Bill itself, and they leave no doubt that the Government dislikes the landlords as a class. I am heartily willing to support any stringent provision for stopping the levy of illegal cesses if our rulers would be disposed not to make fair enhancements impracticable. But I beseech them to consider whether it is just and wise to make no distinction between the innocent and the guilty, and to punish the whole class by making the *law too harsh for every body.*

2. The landlords of Bengal and Behar as a class, though not numerically large, constitute a very important and useful section of the community, and they are neither the creations of Lord Cornwallis nor of any other British Governor General of India as some people suppose, but they claim their existence from a date centuries before the commencement of British rule in India; and it will be unwise and unjust for the Government to curtail the rights they have been enjoying now for hundred years and which have been solemnly confirmed to them by the Permanent Settlement and the Royal Proclamation of 1858.

3. If, however, our rulers think the landlord class as not undeserving of fair treatment, I am sure their sense of justice will oblige them to reconsider the Bill, and to make it really fair and equitable to both the sections of the landed class. And on this belief I now proceed to discuss some of the important sections which have struck me as unjust and therefore objectionable from the landlord's point of view—preserving as far as possible the order in which they are arranged in the Bill.

4. *Sec. 15.*—This section unlike every other law we have, instead of putting on the shoulders of the tenant the burden of proving his allegation that he has paid the rent of his tenure or holding at an uniform rate since 1793, places upon the landlord the onus of disproving this allegation, or rather of proving the contrary if he (the tenant) can only shew that the rate of his rent has not been changed for the last twenty years. This provision has also been objected to by a large number of people

both official and non-official since the publication of the Rent Commission's Bill and report; and Mr. Reynolds in his memo. dated the 21st February 1881, appended to the 1st Bill he prepared under directions from the Bengal Government, admits the soundness of those objections, and the difficulty of the landlords in these terms:

"Allowing all due weight to the arguments of the Commission, it is to be remembered that the presumption was first introduced by Act X of 1859, and that it was then necessary for the tenant to prove an uniform rate from 1839. It is now only necessary to prove such uniform payment from 1861. As there is reason to think that rent receipts have been much more carefully preserved, during the last 20 years, than during the 20 years which preceded them, it seems to follow that the lapse of time has made more and more easy to raise the presumption, and more and more difficult to rebut it. Nor can it be denied that auction purchasers labour under a special grievance in this matter."

Though Mr. Reynolds in his speech in Council on the 12th March last has modified his former views in the belief that a landlord will always be able to get out of his difficulties in such cases by applying for a record of rights under Chap. XII of the Bill, I fail to see the force of this reasoning; for I am sure the tenant will not hesitate to take advantage of this section to make an incorrect allegation of his *isthumurari* right before the officer preparing the record, and then that officer will have no alternative, but to throw the whole burden of proof on the landlord in the same way as a Civil Court now does. True, this provision about presumption is our existing law, but it is nevertheless an unfair one; and when the law is being altered for the benefit of the ryots, I think any provision which is unduly harsh towards the landlords should be altered also: I therefore beg our legislators to either omit this unjust section altogether or at least to restore the shape which was given to it in the 1st Bengal Bill by Mr. Reynolds.

5. *Sec. 17.*—I believe that to prevent the meaning of this section being misunderstood, the words "if the rate of rent have not been altered thereby," which exist in the Commission's Bill, the 1st Bill prepared by Mr. Reynolds under the direction of the Government of Bengal, and the Digest should not be omitted.

6. *After Sec. 31 and before Sec. 32.*—I propose the insertion of a Section to entitle a landlord to demand and receive in all cases a security from the transferee or his successor, of not less than half the annual rent. When it is proposed to give to all permanent tenure-holders the advantages now enjoyed by Patnidars in regard to the registration of their tenures, I think it is only fair that landlords should be given the same privileges about demanding and receiving security which a zemindar now has when a Patni under him is transferred by sale, bequest, or inheritance. This provision is very necessary : since these tenures are not liable to summary sales like the Patni taluks, the arrears that accumulate for default of payment of rent together with the costs of realizing them sometimes grow too large to be fully covered by the sale proceeds.

7. *Secs. 45 and 47.*—For the sake of convenience I take the two together. These sections propose to give to all ryots whether *khudkast* or *pykast* who have held lands in a village or estate for twelve years or more, the new status of settled ryots of that village or estate; and to confer upon all such ryots the right of occupancy in regard to any *ryoti* land they may have held whether they paid any rent for it or not, and even if they have entered upon it the day before the last day of the term fixed by law. The payment of rent for a plot of land is an essential condition under the present law for the accrual of the right of occupancy in regard to that plot, and even the Rent Commissioners the majority of whom are well known to be very friendly to the ryots did not propose to do away with this condition very necessary for the protection of the right of

the landlord class. This alteration of our present law would further confer the right of occupancy upon the majority of the *Pykast* tenants who hold from year to year, and who do not consider this right of any value at all. Under the present law none of these ryots has acquired an occupancy right to any particular plot of land in the village though many of them might have held lands in it for 12 years or more; because there being no certainty that all the tenants who have come in this year from remote places, will also come in the next, those who at the beginning of each season come first are first served—hence very few of these ryots can shew uninterrupted possession of the same fields for any number of years. A landlord now therefore always can, as he often does, give these holdings over to new settlers whenever he finds an opportunity of reclaiming some portion of his waste lands by so doing; for a new settler would not and could not take up waste lands, unless he could secure a proportionate quantity of land which had been under cultivation. But if Secs. 45 and 47 were passed into law, in their present form, a great check would be put to the reclamation of waste lands and the landlords will suffer a great loss thereby. Besides the landlords would suffer material injury in another way: namely, that many of these *Pykast* cultivators having thus held lands in the village for 12 years or more, will now acquire occupancy rights to the plots they have cultivated this year; though as it often happens they would not come to claim their rights again: but it is all the same to him if they come to claim their right or not, the landlord shall have to refuse every one of these plots to a new ryot who might come first and like to take up some of them next year, consequently he shall have to lose the whole of his next year's rent on these holdings, as it is well known that it is impossible to realize rents from these ryots if they have no crops which might be distrained or attached. Under these circumstances I must object to the sections, and I venture to add that to consider one of this

class a settled ryot of the village or estate is quite foreign to our traditions. Even the Bill prepared by Mr. Reynolds under direction of the Bengal Government did not propose an extension of the occupancy right such as this.

8. *Sec. 50 clause (f.)*—It proposes to make the occupancy right transferable by sale or bequest, without even any check against a holding being broken up piece-meal in the course of the transfer, a provision considered desirable in both these cases by the Select Committee on Mr. Mackenzie's bill, to protect the landlords from needless inconvenience and annoyance. I regret to see several officials in high position even the Hon'ble the Law Member included, believe that this is at present held to be the custom "throughout a very large portion of the area to which the Bill applies." If they will ascertain by enquiry the total member of holdings transferred from one family to another within a certain period and compare it with the number transferred by sale or bequest, they will find that the latter class of transfers bears a very small proportion to the former; and that the provision would be a novelty to the majority of our districts. This proposition which is intended to make a substantial addition to the privileges of the ryots by taking away something equally substantial from the rights now enjoyed by the landlords, has already been discussed a good deal by the public both from a landlord and a ryot's point of view. Whether this new right will practically benefit the ryots or not, it is beyond my province to discuss here. But if this clause be passed into law, (1) the landlords will be deprived of the power they now have to keep new hostile tenants out of their properties: (2) the income they now derive from the Nuzzurs, which they get by letting out the profitable abandoned holdings, will be entirely lost to them, as all such holdings then will be sold and not given up by their holders; and (3) a lot of unprofitable holdings which no body would care to buy will come back to the landlords' hands and thus deprive them of a portion of

their income; such holdings do come to their hands often, but now the better class of them come also, and by breaking up the old holdings when necessary and forming new ones composed of good and bad plots a landlord can almost let out every inch of his property, which advantage he will be deprived of hereafter. The following five sections certainly enable a landlord to meet inconvenience, No. (1) if he be a richman, and capable of buying up his tenants whenever they might be disposed to sell away their holdings, but not otherwise. While Nos. (2) and (3) as I have shewn above would surely bring heavy pecuniary loss to the landlord class. When this question was originally taken up by Government it proposed to give to the landlords facilities for the speedy realization of their dues and a law to ensure fair enhancement of their rents as compensation for this new right which would be given to the ryots at the landlords' expense, but as this Bill does not intend to give them the two advantages named above in a way likely to better their present position, I must very respectfully, but strongly object to this new measure.

9. *Chap. VI. sub-chapters A. B. C. D. and E.*—I take up all these sub-chapters together in order to be able to shew in a convenient way my reasons for the additions and alterations I am going to propose to some of their sections, which give the rules as to how the money rents of occupancy ryots shall be settled by Government officials; and in cases of amicable enhancements the limits which the law shall not allow the rents to exceed. Act X of 1859 virtually made the occupancy ryots co-proprietors with the landlords, and this Bill proposes to confer upon the tenants what little is now wanting to make that right complete: if after having brought things to this state the legislators do not say definitely what is to be the share of each party in the income derived from the land, or at least how far one party can advance and the other recede, solely because the existing rents are either lower or higher than the share of the

produce from the soil, it is but natural that they will quarrel; and if the law would not give the landlords what in fairness they ought to get and what they used to get not many years ago, it is quite natural that as long as they exist they shall try to secure their fair share by means other than what the law points out. especially when it is seen that the law-abiding are in a worse plight than the less scrupulous. If the legislature or rather the Government does not want that the rent of the occupancy ryots should be enhanced, it is better to say so at once and in plain words than to hold out hopes to the landlords of better things and then to deny them the fulfilment. The High Court ruling laid down in Thakurani Dasi's case and based upon the existing law has been universally condemned as unworkable for the purpose of restoring even that proportion which the rent bore to the gross produce of the soil before the time the prices of produce rose; and therefore it has always been decried by the landlords as unfair to them. If our rulers did not know this before, they know it very well now from the letters and notes submitted to them by persons having practical experience on the subject since the publication of the Rent Commission's Report and Bill, and I fail to make out why with such knowledge the Government should persist to lay down this case-law as the rule to be observed by rate-table makers and courts to determine what enhancement of the rent of occupancy ryots should be allowed. When rents are paid in kind, as far as I am aware they are everywhere adjusted now according to defined shares of the gross income derived from the land, and every body—even the Government has acknowledged that a certain share of the gross produce should be limited beyond which money-rents also must not be enhanced: but I cannot see why should Government hesitate to allow an enhancement up to that share of the gross produce, simply because of the existing rent being below it? and this is the law for which the landlords have always been petitioning. Some of the friends of the ryots object to

this principle of enhancement on the grounds that it will raise the rents very high all on a sudden, and that because of the existence now of a difference in the shares or rather in the ratio of the rent to the gross produce in the different tracts of this Province, any definite share if fixed by law would be unfair. Now this Bill provides that the enhanced rent shall not be more than double the former rent, and from my personal experience in the zemindari business, I can say that this rule is often followed in amicable enhancements and not in a few cases of individual *jumabundis* the enhanced rents go up to that maximum. I therefore think this provision with that about ten years' rent meets the first objection. In regard to the second I fail to see its force: as it can be proved by historical evidence that in old times the rents bore in every part of the province an uniform proportion to the gross average produce of the soil, and our laws have only latterly created the difference. I do not therefore see what harm can there be if after some more years the proportion be uniform again—the rights of the landlords as also of the occupancy ryots being the same everywhere throughout the province. Then comes the question what should that share of the gross produce be up to which the landlords shall claim enhancement and no further: the Rent Commission of which the declared friends of the ryots were the prominent members proposed that rents should not be allowed to go beyond a fourth share of the gross produce; but the landlords have been claiming a higher share because they are fully entitled to what the Government and they themselves were receiving at the time of the Permanent Settlement when the Government made over to them its rights to the future increase of the income from the land for a fixed revenue; and these shares together come up to very near three-fifths of the gross produce (Vide the Fifth report of the Select Committee on the affairs of the East India Company, Vol. i, Page 18). However, I believe in regard to staple crops they would now gladly accept even the fourth share of the gross pro-

duce of the soil in order to avoid the worse fate proposed for them by this Bill if they are allowed to enhance the rent up to that share where it is less because it is less. Concerning special crops to grow which it is necessary for the ryot to undergo more than ordinary labor and expense, I think the landlord should be content to accept a much smaller share of the gross produce, say one-sixth. With regard to the safeguard that the enhanced rents shall not in any one occasion be more than double the existing rent, I have already said that in amicable enhancement this rule is generally followed now; but I cannot see why this Bill declares that in future in the case of an amicable enhancement this maximum should be reduced to six annas per rupee of the former rent: if the tenant be expected to feel no great hardship to pay double the old rent after an expensive law suit, why should it be considered hard for him to pay the same amount of rent when he has been saved that expense; and I fail to see why a landlord because he feels disinclined to go to court against his tenants, should be denied the advantages which the Government wants to give to his more litigious brother. As far as I can see the result of this law would be to drag into court friendly landlords and tenants against their will and to subject them to perfectly unnecessary expenses forgetting what they were ready to settle and they would have settled amongst themselves but for this law. About the other provision mentioned in Sec. 59 Sub-Sec. 2. that the revenue officer shall not register the contract without which there can be no amicable enhancement, before he is satisfied that the enhanced rent has not excluded that share of the gross produce beyond which enhancements must not go: I admit the reasonableness of a check against the *jama* exceeding the limit fixed by law, even by an amicable enhancement; but the question is whether that purpose cannot be equally served by adding another sub-section authorizing the tenant in case the landlord refuses to correct the mistake, to petition the Civil Court within one year of the execution of the contract to declare it

null and void, if the amicably enhanced rent should be found to exceed the share of the gross produce fixed by law as the limit to enhancement. The provision as it stands will make amicable enhancements simply impossible, for it will take a long time and a good deal of bother to satisfy the registering officer that the enhanced *jama* has not exceeded the share of the gross produce of the holding up to which the landlord is entitled to enhance—especially if the holding be situated in a part of the country for which no Revenue officer has prepared a table; and every body who has any practical experience of this business knows that a tenant would not stand all this bother and loss of time in order to be bound to pay a higher rent for the benefit of his landlord. If Government should feel disposed to adopt the principle of shares in regulating enhancements, I think abatements should also in fairness be regulated according to that principle: I mean an occupancy ryot should be entitled to an abatement of his rent to a certain share of the gross produce of his holding below which rents shall not be abated because the rent exceeds that share. Now what that share should be below which there shall be no abatement? I have already mentioned that according to the fifth Report from the Select Committee on the affairs of the East India Company (Vol I. Page 18) the ryot's share at the time of the Permanent Settlement was two-fifths of the gross produce of the soil; while Elphinstone in his History of India (Page 17) says "a country is reckoned moderately assessed where he (the sovereign) takes only one-third," and again in Page 475 when treating of the revenue system of Akbar he says on the authority of the Ayen-i-Akbari "the land was divided into three classes, according to its fertility; the amount of each sort of produce that a bigha of each class would yield was ascertained, the average of the three was assumed as the produce of a higher, and one-third of that produce formed the Government demand" of course the remaining two-thirds were left to be shared by the ryots and the zemindars of

whose (the latter's) existence at that time there are proofs, I therefore believe that no body can call it unfair if ryots were allowed to claim an abatement down to one-third share of the gross produce in staple crops and one-sixth in special crops but not lower, if the rents exceeded that share of the gross income of their holdings. Before I conclude my remarks on these sub-chapters, I must respectfully enter my protest against the new proposition in Sec. 79 Sub-Sec. (2); as in the present state of the official feeling towards the landlords, there cannot be two opinions that the discretion will be exercised against that class.' For these reasons I propose that

In Sec. 59 Sub-Sec. (2) the words "six annas per rupee greater" in lines 3 and 4 be omitted and replaced by the word "double."

The words in this sub-section from "or more" in the 4th line to "the harvest time" be omitted; and another sub-section added to this section to enable an occupancy ryot to petition the Civil Court within one year of the execution of the contract to declare it null and void, if he find that the *jama* as amicably enhanced exceeds the fourth share of the gross produce of his holding, and the landlord declines to cancel the contract amicably when asked to do so.

In Sec. 63 clause (6) the words from "or the" in the first line to "equitably" in the second, be replaced by the words "of rent which according to one-fourth of the gross produce be."

The whole of Sec. 64 with the Proviso be omitted.

In Sec. 74 Sub-Sec. (1) the words "on one or more of the following grounds namely," at the foot of this sub-section be replaced by the words "of any land on the ground that it is below one-fourth share of the gross produce of such land;" and the grounds (1), (2) and (3) with illustrations of ground (1) be omitted.

In connection with illustration (6) I here beg to mention that in my zemindari experience I have never known a ryot receiving

reduction of rent because some ancestor of his held the jote at the time of the Permanent Settlement: the hajuts as these reductions are called in my part of the country are only given to the *Pradhans* or headmen according to their status in the village, or for services their families have done to the landlord's family.

In Sec. 75, the words "2nd or 3rd of the grounds in lines 1 and 2 be replaced by the words "the ground;"

In the same section clause (c) the Proviso be omitted;

In clause (d) the words "one-fifth" in the second line be replaced by the words "one-fourth."

A separate section be inserted after this to the effect that nothing in this chapter shall debar a ryot from obtaining a reduction of rent from that at the prevailing rate of the village to which his family is entitled.

In Sec. 79 Sub-Sec. (1) the words from "either" in line 5 to the word "namely" in line 7 be replaced by the words "his horticultural or agricultural lands on the ground that for causes beyond his control the fertility and the prices of produce having fallen his rents have become higher than one-third of the gross produce of such lands;"

The grounds (*a*) and (*b*) be omitted:

And in Sub-Sec. (2) the words "it thinks fair and equitable" at the foot be replaced by the words "would make it equal or as near as possible to one-third of the gross produce of the land."

10. *Sec. 93 sub-sec. (2) clause (b) and Sec. 119.*—There are proposals to virtually deprive the landlords of the right they have always possessed to eject at their will a tenant who has not acquired the right of occupancy. They limit the enhancement of the rent of a ryot of this class to five sixteenths of the gross produce; and give him the privilege of throwing up his holding and obtaining a heavy compensation if he did not choose to pay an enhancement within that limit, even if that increase were to make the rent equal to what is paid by an occupancy ryot of the

village. These provisions are in my opinion very unjust, and therefore I must respectfully but strongly protest against them.

11. *Sec. 96 sub-sec. (1) clause (a).*—The third ground of enhancement of the rents of occupancy ryots according to Act VIII of 1869 B. C. is "that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him." This clause therefore though it empowers the landlord to successfully claim an enhancement if since the last measurement a ryot has added to his holding lands which then did not belong to it, does not meet cases where the holdings were undermeasured at the last *Jareep* (measurement). This alteration of our present statute was propose d in Sec. 22 illustration (c) of ground (2) of the Rent Commission's Bill, and the same of the 1st Bengal Government Bill, and it was strongly objected to by the public on both these occasions. If Government would only consider this matter thoroughly, they will be able to see that unless it was undermeasured at the former survey, a holding can not possibly be found in the subsequent one to exceed the area it was put down for last time; if no new lands have been added to it since and if the two measurements are done by the same standard poles and chains. They will also be able to see that the lands could not have been undermeasured without either a mistake or a collusion between the ryots and the landlord's Ameen (Surveyor). Under these circumstances this provision will do a gross injustice to the landlords who are as much entitled to protection as the occupancy ryots by encouraging the tenantry to commit crime and awarding to them rent free all lands of the rents of which they have been able to defraud their landlords for a certain number of years. I do not know what induced Government to propose this alteration in our present statute, which is supported by the custom of the country and the High Court ruling in the case of Prankissen Bagchi *vrs.* Monmohini Dasi (XVII W. R. Page 34), but I know that unlike the

mukrari tenures or lands conveyed by sale, the occupancy and the other *ryoti* holdings are not hitherto been carefully measured as a rule; because not expecting an alteration in the existing law such as is now proposed, the landlords have not hitherto cared to spend a lot of money for this purpose; and that therefore this present, and I venture to say, unjust proposition coming as it does without a previous warning will if passed into law, be very injurious to the landlords, and as such I most respectfully but very strongly protest against it.

12. *Sec. 103 sub-sec. 1 clause (a).*—This is another proposal to alter the existing law to the disadvantage of the landlord. According to the present law, before he is allowed to deposit his rent, a tenant has got to swear that he offered to pay it to the landlord's agent, and he (the agent) has refused to accept the money. The fear of being prosecuted for swearing falsely has hitherto obliged many a hostile tenant to pay his rent to the Tehsildar: but if this proposal should become law that wholesome fear would be removed and every hostile tenant will deposit his rent into Court just in order to harass the landlord. Any body acquainted with the practice of our courts can well conceive the costs, trouble and annoyance, a landlord must go through, to take out the rents the tenants have deposited for him. When the landlord's agent is in the village and he often is there, the trouble of going to him, or sending a man to him to offer rents is little or nothing; and even if he be away, the tenant cannot undergo any great trouble, loss, or risk, in offering payment of his rent to the landlord himself now that the Post Office money order system can be taken advantage of almost everywhere. Under these circumstances I beg Government to let the law remain as it is.

13. *Sec. 140.*—According to our custom a holding is considered abandoned if the tenant leave his village or the landlord's estate for good—even if there be no arrears of rent due from him: this custom supported as it is by several High Court rulings, enables the landlord to make timely arrangements for the cultivation of

the holding, and saves him from any loss of rent unless the holding be such as no body would care to take up. But if this section should become law, a landlord must lose one whole year's rent before he will gain the rights of reletting the holding for which he shall have to pay the same Revenue or the same rent to the superior proprietor as before; and every body who has any experience in Zemindari work knows quite well that it is hopeless ever to realize this arrear from the old tenant who has abandoned his holding. For these reasons I must humbly protest against this proposal.

14. *Sec. 151 sub-sec. 2 clause (a).*—I propose the insertion of the words "or a single landlord" after the word "landlord" in the second line of this clause, because there is many a landlord who singly owns a large tract of the country and who without an alteration such as I propose would not be benefitted by this clause, though he may have a very large number of tenants to deal with.

15. *Sec. 164 sub-sec. (2) clauses (a) and (b).*—These two clauses are superfluous after the provisions made in Sec. 151 sub-sec. (2) clauses (a) and (b) and I therefore think they should be omitted.

16. *Sec. 166.*—As a rule a landlord has recourse to distraint only when he sees that the realization of his dues would be very difficult after the tenant is able to sell away the crops or take them beyond reach of the landlord: and in great many cases it is very difficult: especially in regard to *Boro* or such other holdings, the area of which is determined after the crop is ready, when the tenants are *Pycasts* paying their whole year's rent in one instalment before they go away with their profits to their distant homes about which the landlords know nothing. This section therefore cannot and will not help the landlord to realize his dues unless there be a provision in the law binding the tenant under penalties neither to sell away the crops nor to remove them beyond the village or estate without

the written consent of the landlord till one month after the instalments on those crops fall due. The crops are now the only security a landlord has for the realization of his dues, and I must object to the proposed alteration in the existing law without a provision such as I have suggested.

17. *Sec. 186.*—A landlord generally living away from his estate has no opportunity of knowing whether the rents by the receipt of which he has been benefitted have been realized by his Tehsildar in the ordinary way or by illegal distraint. I believe, therefore, that if this section should pass into law, it will put many an innocent landlord into difficulties. Besides no zemindari Tehsildar after the preceeding section becomes law would care to undergo the risk of punishment for criminal trespass in order to do a small turn for his employer; so I do not believe this section is necessary to prevent illegal distraint. Under these circumstances I beg Government to omit this new section altogether.

18. *Sec. 207.*—I object to this section because if it becomes law I believe it will very probably increase litigation to an alarming extent, and thereby injure both the landlords and the tenants. Opportunities have already been given in the proceedings for the adjustment of rents in the ordinary way and in Sec. 151 sub-sec. (2) clause (*a*) of this Bill for the determination of this question and I cannot see any necessity for the tenant to get his status determined except when an enhancement suit has been instituted against him by his landlord: besides a very large number of *Pattas* and *Kabulyats* have been executed within the last few years, and the number is daily increasing as a return from the Registration offices will shew. So I am sure the tenants cannot possibly be injured by the omission of the Sub-Chap. C of Chapter XIV.

19. *Sec. 208 sub-sec. (1) clause (c).*—I admit that the hardship would be very great if the holder of a tenure mentioned in this clause be made liable to ejectment when his landlord is sold up for arrears of rent; but unless the Legislature provide in

such cases for an enhancement of rent of the lands comprising the tenure, the superior landlord's interest cannot be protected: because otherwise there will be no check upon the creation of encumbrances, such as is mentioned in this clause. As long therefore as Government would not make a provision such as I have mentioned above for the protection of the rights and interest of the superior landlords in these cases, I must humbly protest against this clause.

NOTES.

KHAMAR LANDS.

Babu Gopal Chunder Acharjea Chowdry of Mooktagacha has got no measurement papers showing arrears of khamar lands. There is no lasting distinction between *khamar* and *ryoti* land. It will cause great loss and inconvenience to landholders.

Babu Sreenath Roy of Dacca:—There is no marked distinction between *khamar* and *ryoti* lands. They constantly change character. There would arise great practical difficulty if the area of *khamar* lands be fixed. The change of payment in kind into money rent would be ruinous to small landholders who depend for their food-grain on the supply from their ryots.

Raja Radha Bullub Sing of Koochiacole has got no measurement papers of all his villages showing the areas of *khamar* lands. An attempt to fix the area of *khamar* lands would lead to great confusion. The provisions are radically wrong.

Newab Ashanulla of Dacca does not approve of the principle of Section 6. There is no custom which prevents a landholder from converting unoccupied *ryoti* land into *khamar*. They claim equal proprietory title in both classes of land.

Maharaja Sheopersad Sing of Gidhore has got no measurement papers showing the area of khamar lands. There would be great difficulty if the area of khamar lands be fixed. There is no custom fixing the character of *ryoti* lands in perpetuity.

Babu Bejoykissen Mookerjea of Utterpara:—No party would be benefitted by these provisions, they would be an arbitrary encroachment on the rights of landholders.

Babu Jadubkissore Acharjea Chowdry of Mooktagacha says:—This is certainly objectionable. There is no permanent distinction between *khamar* and *ryoti* lands.

Babu Charu Chunder Mullick of Calcutta :—The sections would work great hardship on many landholders and the work of registry of *khamar* lands would take years.

Babu Jogendrokishore Roy Chowdry of Ramgopalpore :—There is no distinction between *khamar* and unoccupied *ryoti* lands.

Raja Shyama Sunker Roy Chowdhury of Teota :—Proceedings of a public meeting in which 200 landholders were present. The provisions of the Tenancy Bill are subversive of the vested and customary rights of the zemindars of Bengal. The proposed distinction between *khamar* and *ryoti* lands is one-sided and all in favour of the ryots.

Babu Gobind Chunder Roy of Narail has not got measurement papers of all his villages showing the areas of *khamar* lands. The proposed restriction would entail serious loss on landholders. Most landholders specially those who are poor, let out *khamar* lands without written leases ; the provision for the acquisition of right of occupancy in such lands would be therefore very injurious to them.

Mr. M. B. Morrison of Bhaugulpore has got no measurement papers of all his villages. It would be impossible to define the maximum limit of so-called *khamar* lands in a village. There is no distinction between them and unoccupied *ryoti* lands.

Babu Komul Kissore Dutt of Mymensing has got no measurement papers showing the area of *khamar* lands in any of his villages. The proposal to fix the maximum area of *khamar* lands is extremely objectionable. It would deprive landholders of absolute control over lands which are peculiarly their own.

Babu Hemchunder Chowdry of Ambaria has got no measurement papers to show the area of *khamar* lands in his estates. Unoccupied *ryoti* lands are always reckoned as *khamar* lands.

Babu Raj Rajeswary Prosad Sinha of Surjapore, Shahabad :—There would be great difficulty if the area of *khamar* lands be fixed for ever ; unoccupied *ryoti* lands are always treated as *khamar* lands.

Babu Kally Kumar Roy Chowdry of Barripore:—It would be impossible to fix the area of *khamar* lands for ever. The area *varies annually.*

Babu Mohima Runjun Roy Chowdhary of Kakina:—The proposal to fix for ever the area of *khamar* lands is objectionale. No ryot has any right to land vacated by a fellow ryot; unoccupied *ryoti* land are simply *khamar* lands.

Babu Kally Prossunno Gajendro Mohapatro of Shabra has got no measurement papers. No higher title is claimed by landholders in respect of *khamar* lands than in respect of unoccupied *ryoti* land.

Babu Janoky Ballub Sen of Maheegunge, Rungpore, has got no measurement papers showing the area of the *khamar* lands in his estates. After all the trouble and expense have been undergone, it is uncertain whether the landholders or the tenant would be benefitted. There is no distinction between *khamar* and unoccupied *ryoti* lands.

Raja Kistendronath Roy of Balihar has got measurement papers of some villages, but it would be impossible to determine therefrom the exact area of *khamar* lands. It would be difficult and very inconvenient to fix the area for ever. There is no distinction between *khamar* and unoccupied *ryoti* land.

Babu Radha Bullub Chowdry of Sherepore, Mymensing:—These provisions would place an arbitrary limit on undisputed rights of Zemindars. There is no distinction whatever between *khamar* and unoccupied *ryoti* lands.

Babu Rajkumar Dutt of Noakholly:—The proposal to fix the area of khamar lands would ferment disputes between landlords and ryots and throw enormous cost on both of them.

Babu Ishan Chunder Chowdhry, and Kali Mohun Mookerjee managers of Jogidia estate, Noakhally:—The proposed presumption regarding *khamar* land is unjust. It is opposed to Section 106 of the Evidence Act. The enormous trouble and expense to be incurrred would be sheer waste

Babu Ram Sankur Roy Chowdry of Dacca:—Great practical difficulty will be felt in fixing areas of *khamar* and *ryoti* lands for ever. There are many circumstances under which one class of land is converted into another and changes always occur in lands which lie in proximity to rivers as in East Bengal, where lands in the occupation of ryots are washed away or made unfit for cultivation by deposit of sand. Ryots give them up and when new lands accrete and become fit for cultivation, the landlord lets them out to ryots. The provision of the Bill will cause extreme hardship to both parties in places where such dangers constantly occur. There is no lasting distinction between *khamar* and *ryoti* lands. Any unoccupied land may be converted into *khamar* and any *khamar* land may be let out to a ryot at the discretion of the landlord. There is no custom, usage or tradition extant disentitling the Zemindar from converting *ryoti* lands into *khamar* lands. A plot of land ceases to be *ryoti* land the moment a ryot ceases to hold the same. No distinction exists between an unoccupied plot of *khamar* and an unoccupied plot of *ryoti* land and as regards the Zemindar's proprietory rights thereto, they are both at his absolute disposal.

W. M. Eddis Manager of Maharaja Durbhanga's Estates, Purneah:—Definition of *khamar* is unjust, both for districts with dense population and with no waste land, and districts with sparse population, extensive wastes and low rents. In the estimation of the ryots, a relinquished *jumma* is the sole property of the Zemindar and always has been so considered. The proprietory right in *khamar* and in such relinquished land is the same. Sections 5 and 6 do not define *khamar* lands with sufficient clearness; Zemindar's right to waste lands should not suffer by his allowing ryot's cattle to graze on them. Even if entered in the *Hustabood* as paying a small *jumma* for grazing, it should be presumed that such privilege was only given while the lands were waste, unless specially covered and defined, both as to quantity, term and rent, by *pattah*. Some arrangement, however

ought to be made for "common" land in every village sufficient for the pasture of cattle.

Babu Kisto Chundra Sandel Chowdhury Mymensing has got no measurement papers. There is no such rule or custom here (Mymensingh) that *ryoti* lands can not be turned into *khamar*. No distinction is here observed in letting out either class of lands. Lands relinquished by ryots become *khamar* lands. No lands answering the denomination of *ryoti* lands are to be found in this district. It entirely depends on the will of the landlord to let fallow lands and lands relinquished by ryots. No ryot can ever claim a lease of lands against the will of the Zemindar. I claim equal rights and privileges to lands left by ryots and unoccupied *khamar* lands.

Babu Suttis Chundra Chowdhury of Mymensingh has got no measurement papers. There is no distinction between *khamar* and unoccupied *ryoti* lands.

Babu Shyama Sankur Mojumdar of Furreedpur has got some measurement papers but not complete; he does not approve of the principle of Section 6. of the Bill. There would be great difficulty in fixing the area of *khamar* lands for ever, inasmuch as in cases of desertion, relinquishment or purchase by the landlord of ryot's land, the land becomes *khamar*, and it is desirable that it should be so; there is no lasting distinction between *ryoti* and *khamar* lands, in any part of his estates. Nor is there any custom, usage or tradition which disentitles the Zemindar from converting into *khamar* unoccupied *ryoti* lands; no ryot can as a matter of right claim lease of relinquished holdings. We do not know of any such claims being ever made or any consideration paid by Zimindars to such claims. Tenant's claims extend to their respective holdings and no further. Zemindars do not claim any higher proprietory right in respect of unoccupied *khamar* than in respect of unoccupied *ryoti* land. *The claim to both is* precisely the same.

Bhagulpur Association. Some Zemindars have got measurement papers of cultivated lands including *khamar* lands. Great many

have no regular measurement papers. The fixing of the area of *khamar* for ever would interfere with the conversion of unoccupied lands into *khamar*, and also with all accretions and reclaimed lands which according to the existing law are completely at the disposal of the landlord. This difficullty would also be felt in the case of lands relinquished and abandoned by ryots, for although a landlord can cultivate them they would still retain their character of *ryoti* land under the Bill. There would be much dispute between landlords and tenants when enquiry would be made, as to the area of *khamar* lands. What would be the effect of the operation of such a law in places where ryots hold lands in single or different plots, partly cultivated with adjoining waste, *khamar* and *nijjote* lands, without any line of demarcation to distinguish them, and especially in districts such as Bhagulpur where ryots hold lands without registered *Pattahs* and *kobooliats* with specified boundaries? No lasting distinction is observed between *khamar* and *ryoti* lands. The Zemindar under customary law is entitled to add to the area of *khamar* or *nijjote* out of lands which are not held by cultivators in their own right including of course lands which have been surrendered or abandoned by ryots.

Babu Surja Narayan Singh of Bhagulpur:—The distinction between *khamar* and *ryoti* lands is arbitrary and unreasonable and is not founded on customary law. Will waste lands not held by ryots be treated as *khamar* or *ryoti*? If the latter, where is the reason for it and why should not the landlord be entitled to bring it into cultivation on his own account and keep it as his *khamar*, and why should not the incidents of *khamar* attach to them if after cultivating them at his own expense he lets them out to ryots?

Raja Promotho Bhussan Dev Roy of Jessore:—From time immemorial even the paramount power owned *khamar* lands for experimental agricultural purposes. Several Zemindars have perceived the good of having model farms, hence they ought to be allowed to increase their *khamar* lands.

Raja Purna Chundra Singh Bahadur of Paikpara has not got measurement papers of all his estates showing the extent of *khamar* lands. The preparation of such a paper would require considerable time and outlay of money; he does not at all approve of the principle of Section 6. This section will at once put a stop to all additions to *khamar* lands which are daily done on account of accretions, relinquishments, deaths of ryots without heirs and purchases of holdings. To make a survey of all *khamar* lands and thereby to limit and define them once for all would therefore be encroaching upon the rights of zemindars. There is no distinction observed at all between *khamar* and *ryoti* lands. All lands that remain waste are now ordinarily called *khamar* lands and as soon as they are let out they become *ryoti*. So that what is *khamar* this year becomes *ryoti* in the next and *vice versa*. To make a permanent distinction between the two would be most arbitrary; there is no custom, usage or tradition which disentitles a Zemindar to convert into *khamar* any unoccupied *ryoti* land, or entitles a ryot to claim the lease of lands left vacant by a fellow tenant. I have never heard of any such claims being ever preferred. The Zemindar is considered as proprietor in the fullest signification of the term of all lands comprised in his Zemindaree, save and except those over which ryots have acquired any right by contract or law. I look upon all my lands as my property. With respect to *khamar* lands the Zemindar's right of use and enjoyment is perfectly unfettered.

Babu Kulada Kinkur Roy:—I have got some measurement chittahs of *khamar* lands but they are not complete. It is not the custom to distinguish those lands from others. There would be practical difficulty in fixing the area of *khamar* lands and declaring other lands as *ryoti* for ever. No distinction is observed between *khamar* and *ryoti* lands. There is no custom, usage or tradition which disentitles a Zemindar from converting *ryoti* into *khamar* land or entitles a ryot to claim the lease of lands abandoned by a fellow ryot. No such claim was ever preferred by a ryot and

allowed by a Zemindar. I do not claim any higher proprietory *right in respect of unoccupied khamar. land than in respect of* unoccupied *ryoti* land.

Babu Durga Churan Bose of Mymensing has got no measurement papers. The distinction is most arbitrary. There would be great practical difficulty if it were made.

Mahomed Ali Khan, Zemindar, Attea, Mymensing, has got measurement papers but it would be difficult to ascertain from them the area of *khamar* lands in his estate. He says:—

"I do not approve of the principle laid down in Section 6 of the Bill. The Zemindar being the proprietor of the soil, there should be no restriction on his power of dealing with his lands in any way he choses. If the landlord's power of converting *ryoti* lands into *khamar* be restricted he shall have no willingness to reclaim waste lands. No distinction is now observed between *khamar* and *ryoti* lands. There is no custom, tradition or usage extant which disentitles a Zemindar to convert into *khamar* any unoccupied lands or entitles a ryot to claim the lease of lands left vacant by any of his fellows. I am aware of no such claims having been ever set up by a ryot or any allowance being ever made by the Zemindar in satisfaction of such claims. We as zemindars, never claim any higher proprietory right in respect of unoccupied *khamar* than in respect of unoccupied *ryoti* lands. There is no distinction in the Zemindar's right in respect of these two classes of land."

Mr. R. Harvey, Manager, Paikpara Estate:—There are no measurement papers showing the areas of *khamar* lands in the villages belonging to the Paikpara estate.

Small zemindars or Tenure-holders frequently possess a considerable area of land as "khamar" and which they cultivate and make use of; but large zemindars as a rule only retain in *khas* possession the land required for fruit gardens, attached to houses, cutcheries &c. &c. I do not see that Sec. 6. will be of any good in Bengal whatever it may be in Behar.

I do not know of the custom of distinguishing *ryoti* lands from *khamar* as being general. There is no custom, usage, or tradition extant which disentitles a Zemindar from converting *ryoti* lands into *khamar*. On land becoming unoccupied there would seem nothing to prevent the Zemindar dealing with it as *khamar*. I refer to ordinary *ryoti* land. The Zemindar holds no higher proprietory right in respect of unoccupied *khamar* than in respect of *ryoti* land.

TWENTY YEARS' PRESUMPTION.

Babu Gopal Chunder Acharji Chowdry says :—Very detrimental to the interests of landholders.

Babu Sreenath Roy of Dacca :—The effect of the rule has been to prevent enhancement of rent in respect of holdings the rents of which are clearly enhancible. The courts do not believe *Jama Washil Baki* papers and there is no other means to rebut the presumption. The rule also operates very harshly in cases in which the proprietor has shown forbearance and when he was a minor for a long time. It will effectually stop enhancement of rent. Auction sale purchases have no means whatever to rebut the presumption.

Raja Radha Bullub Sing of Kuchiacole :—Landholders have been injured by the rule.

Nawab Ashanulla of Dacca :—The rule would be injurious to landholders.

Maharaja Sheopersad Sing of Gidhour :—The rule presents many difficulties in the way of enhancement. Auction sale purchasers have no means whatever to rebut the presumption. It practically stops enhancement in their case.

Babu Jadub Kishore Acharji Chowdhry of Mooktagacha :—The change proposed in the Bill would increase litigation.

Babu Jogendro Kishore Roy Chowdhry of Ramgopalpur :—The change proposed is unfair.

Babu Gobindo Chunder Roy of Narail :—The presumption is extremely injurious to landholders. It has made the law of enhancement of rent a mere delusion. It is as easy for ryots to prove 20 years uniform payment as it is difficult for landholders to rebut the presumption.

Mr. M B. Morrison of Bhagulpore :—The effect of the rule has been the creation of a number of permanent holdings which never existed in 1793. It has made room for any amount of fraud, perjury and collusion between ryots and Zemindary agents and prevented landholders from getting their just demands.

Babu Komul Kishore Dutt of Mymensing :—The rule is very unreasonable and the proposed alteration would make it worse.

Babu Raj Rajeswary Prasad Sinha of Suryapore, Shahabad :—The effect of the 20 years' rule has been very injurious to landholders. They are unable to adduce evidence as to what was the condition of the land at the time of the Permanent Settlement.

Babu Kally Kumar Roy Chowdry of Barripore :—The effect of the rule of 20 years' presumption has been alarming in this district. The result of the proposed alteration would be disastrous.

Babu Janoki Bullub Sen of Maheegunge, Rungpore :—No landord has to my knowledge been able to enhance rent when the ryot has proved 20 years' uniform payment.

Raja Kistendro Nath Roy of Balihar :—The proposed change would be doubtless injurious to landholders.

Babu Radha Bullub Chowdhry of Sherpore, Mymensing :—This rule of presumption has created a number of permanent tenure-holders who had no existence before.

Babu Pransanker Roy Chowdhry of Dacca :—In this part of the country a landlord rarely sues a tenant for enhancement of rent if he is not prepared to meet the latter's setting up such a plea. There is every likelihood of the Tenant's taking an undue and additional advantage of the change of provision as proposed in the present Bill.

Mr. W. M. Eddis, Manager Durbhanga Estate, Purneah :—I do

not think putting the onus of proof beyond 20 years on the Zemindar is fair, especially where the rent is very low. Every facility should be given to enhance rent where the rate of rent is low and where the ryot cannot prove possession from the Permanent Settlement. I do not think that uniform payment for any 20 years should raise the presumption. Why go out of the way to enable ryots to hold at too low a rate of rent? It is no kindness to them. *All the world over high cultivation and enormously* increased produce follow high rent. I think all the conditions and arrangements and calculations for enhancement will be *difficult, if not impossible,* to work fairly; they seem framed not to work. At all events they all tend to unfairly handicap the Zemindar.

Babu Kristo Chandra Sandel Chowdhry of Mymensing:—Twenty years' presumption, as created by Act X of 1859, was in itself unjust and contrary to all rules of evidence—as being a presumption based upon another presumption. Now to extend this presumption, to all uniform payments of rent for any period of 20 years, is simply absurd.

Babu Shyama Sankar Mojumdar of Furridpore:—The law as it stands with reference to 20 years' presumption is sufficiently hard now, for the Zemindars to rebut the same to the satisfaction of judicial officers who out of sympathy to the ryots want more definite proofs than the zemindars can possibly adduce. If instead of 20 years continued possession previous to suit any period of 20 years whatsoever be substituted as proposed in Sec. 15. the hardship to the Zemindar would still be great and greater facility would be afforded to the tenants in resisting enhancement of rent.

Bhagulpore Association:—This rule has operated upon Zemindars generally very injuriously. The modification now introduced in the wording of Sec. 15 will only add to the difficulties of the Zemindars. The law would work better if it simply left the tenants to make out a *prima facie* case of holding at uniform rates since the date of the Permanent Settlement and the courts to

determine upon the evidence which might be tendered by them, whether under the circumstances of such case a *prima facie* case sufficient to shift the onus upon the Zemindar has been made out or not.

If this be not done, the presumption ought to be confined to cases in which uniform payment of rent for 20 years prior to the *passing of Act X of 1859 has been proved.* The provisions of this Sec. would work in practice as a punishment to those landlords who were lenient enough to allow their ryots to hold at the same rate for 20 years.

Babu Surja Narayan Sing of Bhagulpore :—Estates are sold at auction sales for arrears of revenue or in execution of decrees, and the new purchasers do not find access to the old papers and even if they do, sufficiently old papers are not available. Is it just and proper that mere proof of payment of uniform rent for 20 years should in such cases entitle a ryot to hold at a fixed rent? The courts ought to be left free to apply the rule of presumption according to the circumstances of each case, without any special enactment restricting their freedom of judgment. Moreover the Bill imposes so many clogs to enhancement that in future more than 20 years will often elapse before enhancement could be made and therefore it would work very hard on landlords if this presumption be retained in the Statute Book.

Raja Purna Chandra Sing Bahadur of Paikpara :—This presumption is the creation of Act X of 1859 and it is quite unjust and works hard upon the zemindars. This presumption ought to be abolished. Every case ought to be judged on its own merits and the courts should be allowed to draw the presumptions from the circumstances of each individual case. The exceptions which are made in favor of other estates than those that are permanently settled show the inequity of the provision making one rule for the ryots as against the zemindars and another for the ryots as against Government.

Babu Kulada Kinker Roy :—By the present law the burden of

proof of 20 year's uniform payment is on the ryot. But it does not lie heavily on him. He can throw it on the shoulders of the landlord by raising a presumption only; the Zemindar in that case is bound to adduce strong and conclusive evidence to rebut it. The proposed change throws greater obstacles on his way. The onus would in that case lie on the Zemindar to prove that the ryot has never been in possession of the land at the same rent for any 20 years' together.

Babu Durga Churan Bose, Mymensing:—The presumption is very unjust. The change proposed would make it worse.

Mahomed Ali Khan, Zemindar Attea, Mymensing:—The present rule of 20 years presumption serves as a strong bar to the landlord's success in chunancement suits. The proposed rule goes further and makes the landlord's good chance very very remote.

Mr. R. Harvey, Manager, Paikpara Estate:—I cannot give a satisfactory reply, having had few such suits, but do not think Section 15 will make much change.

SALES OF TENURES. SECTION 52.

Babu Gopal Chunder Acharji Chowdry of Muktagacha:—The provision is very objectionable. The tenures may be purchased by a bigger Zemindar and the landholder may be set at defiance.

Nawab Ashanulla of Dacca:—The provision is certainly objectionable. A right of preemption should be given to landholders in such sales and the rules should be made subject to the landholder's consent.

Maharaja Sheoprosad Sing of Gidhour:—It is a violation of the rights of zemindars. I am quite opposed to the conversion of *ryoti* holding with fixed rents into tenures.

Babu Jadub Kishore Acharji Chowdry of Muktagacha:—The landholder shoud be given a right of preemption even as regards sales of tenures.

Babu Charoo Chundro Mullik of Calcutta:—The right of preemption should be extended to the case of sales by all ryots.

Babu Jogendro Kishore Roy Chowdry of Ramgopalpur :—It is very unjust to landholders to deprive them of the right of pre-emption in sales of tenures.

Mr. M. B. Morrison of Bhagulpur :—Sales of tenures should be subject to the landholder's right of pre-emption.

Babu Komul Kishore Dutt of Mymensing :—There is no objection to these sales being allowed unless restricted by contract.

Babu Hem Chunder Chowdry of Ambaria :—Landholders should be given a right of pre-emption in these sales.

Babu Kaliprosunno Gajendro Mohapatra of Shabra P. O :—This section is objectionable.

Babu Radha Bullub Chowdry of Sherepore, Mymensing :—The transferability of permanent tenures would be very objectionable. It would bring against the will of landholders, turbulent ryots and mischievous Mahajuns in their estates, bring rival zemindars into collision, and place ryots at the mercy of money-lenders. Zemindars should have a right of preemption as regards these tenures.

Babu Issan Chunder Chowdry and Kali Mohun Mookerjee managers of Jogidia estate, Noakholly :—A tenure should not include ryoti interest, and an occupancy ryot whose rent is fixed should not be a tenure-holder.

Babu Shyama Sankur Roy Chowdry of Dacca :—The term "permanent tenure" in Section 25 is vague. If it includes an Ijara for an idefinite period, or an Ijara held without any written contract it would be a fresh invasion upon the proprietory right of the landlord, to make it freely saleable. In such a case the landlord ought to have at least a right of preemption which in this case becomes as much necessary as in the case of occupancy tenures.

Mr. W. M. Eddis, Manager Maharaja of Durbhanga's Estate, Purneah :—Transfer of permanent tenures should be allowed on payment of transfer fees and proper security for due fulfilment of the conditions of the tenure. A transfer by gift or sale should be subject to the zemindar's veto unless satisfactory security for rent

be given and be liable to payment of a substantial fee, say of 25% on the purchase money as is allowed in parts of the Sonthal Pergunnahs.

Babu Kristo Chandra Sandel Chowdry of Mymensing :—Occupancy ryots at fixed rates of rent should not be classed tenure-holders; this right is not transferable by custom in this district. At any rate if this right be made transferable, the right of preemption should be given to the zemindar.

Babu Suttis Chunder Chowdhry of Mymensing :—Occupancy holdings should not be classed as tenures. Landholders should have a right of preemption on the sale of such holdings.

Babu Shyama Sankur Mojumdar of Furreedpur :—We do not think that the so called right of preemption will be of any practical benefit to the landlord. However, the said right extended to cases of mere occupancy tenures may as well be allowed in cases of permanent tenures also.

Bhagulpur Association :—The proposal is liable to objection in regard to ryots referred to in Section 14 who according to the definition of tenure-holders (as in Section 3) would be considered holders of permanent tenures. These ryots should be excluded from the privilege because at present these holdings revert to the zemindar in cases of death of holders without lawful heirs or otherwise, whereas under the provision of the Bill they would escheat to Government. But if ryoti holdings under Section 14 are reckoned as permanent tenures then no right of transfer ought to attach to them, and if the right is given, the right of preemption ought to be allowed to the landlords.

Babu Surya Narayan Sing of Bhagulpur :—The right of transfer should not attach to occupancy holdings as such. In the Bhagulpur district there is no general custom of transfer of occupancy holdings, and in the interests of both landlord and tenant it is not desirable to attach this incident to occupancy holdings.

Raja Promotho Bhusan Dev Roy, Jessore :—With power to transfer occupancy right and facility to acquire it in the same

estate a feverish desire to convert occupancy holdings into ready money will get possession of the ignorant and improvident ryots. They would notify their desire for sale to the zemindar and if he refuses to buy those holdings, money lenders or planters or other objectionable persons will come in against the will of the zemindar and to the detriment of his interest. But if he buys them, not only will there be a heavy drain on his purse, but he will be put to loss of rent so long as he cannot advantageously let it out again. The zemindar will thereby suffer a double loss—loss of interest on the investment and loss of rent. And in nine cases out of ten, the investment of capital for purchasing for consideration what he had otherwise a right to get, would be a dead loss.

Raja Purna Chundra Sing of Paikpara :—As regards tenures which the zemindar recognises as permanent I have no objection to make them transferable, but with respect to tenures which would be made permanent by this law, I object to their being made transferable. Mere right of occupancy ought not to be made transferable. I hold that if the right of occupancy be made transferable, the ryots instead of being benefited by the rule would be made a prey to designing money lenders, who will then in a short time absorb almost all tenures. The ryots will become miserable and they will be made mere daylaborers. On the other hand the zemindars will be put to great difficulty. If they are deprived of the right of selecting their own ryots and if the ryots be empowered to thrust in obtrusive litigants on the zemindars as their ryots, the enjoyment of their respective properties would be greatly clogged and be a source of grievance to them.

Babu Kulada Kinkur Roy :—The right of preemption will do no practical good to zemindars. But it ought to be given in cases of all kinds of tenures.

Babu Durga Charan Bose :—Ryoti holdings should not be reckoned as tenures. In all cases of sale the landholder should have a right of pre-emption.

Mr. R. Harvey, Manager, Paikpara Estate:—No, apparently not objectionable; the custom seems established.

Mohamed Ali Khan, Zemindar Attea, Mymensing:—The proposal contained in Sec. 25 is liable to serious objection. Hitherto such tenures were not saleable or heritable in all cases. It is more objectionable as the right of pre-emption of the landlord has not been extended to such tenures.

REGISTRATION OF TRANSFERS.

Babu Gopal Chunder Chowdry of Mooktagacha:—All transfers of ryoti holdings should be registered. The fees provided for are much below what are paid at present.

Maharaja Sheoprosad Sing of Gidhour:—The provisions are not adequate. The fee should also be raised.

Babu Bejoy Kissen Mookerjee of Utterpara:—Landholders get a *chout* or one-fourth the value of the tenure as fee for registration. This should not be reduced.

Babu Jadub Kishore Acharji Chowdry of Muktagacha:—The fees greatly fall short of fees now given for registration.

Babu Gobindo Chunder Roy of Narail:—The provisions for the registration of transfers of tenures are very defective.

Babu Hem Chundra Chowdry of Ambaria:—These Sections would make no adequate provisions for the registration of transfer of ryoti lands.

Babu Raj Rajeswary Prasad Singha of Surjapura, Shahabad:—Sections 27-35 would not make adequate provisions for the registration of transfers of *ryoti* holdings.

Babu Kally Kumar Roy Chowdry of Barripur:—These Sections would foster litigation and bring on constant clashing between the two classes.

Babu Mohima Ranjun Roy Chowdry of Kakina:—The zemindars should be at liberty to deal with the transfer of lands as their own interests direct them to do.

Babu Janoki Bullub Sen of Maheegunge:—The fees are very low and the provision by which the landholder may be compelled to register would bring on useless and expensive litigation.

Raja Kristendro Nath Roy of Balihar. These provisions would lead to constant disputes and litigation.

Babu Radha Bullub Chowdry of Sherepur, Mymensing:—The provisions are not adequate. The time within which application for registry should be made ought not to exceed two months. There should be a forfeiture of tenant right if no application for registry is made. The fees are also very small.

Babu Raj Kumar Dutt of Noakhally:—Some of these Sections are objectionable.

Babu Pran Sankur Roy Chowdry of Dacca:—Sections 28 and 29 enact that landlords when served with notice shall be bound to register the transferee. Here he has been deprived of the opportunity of putting forward a valid objection if he has any.

Section 30 allows him no discretion in registering a transfer by sale in execution of decree &c. In this case the landlord may only know the name of the purchaser and nothing more. Some provision ought to be made in the law, to enable the landlord to get such information on the subject as the Board requires him to keep a record of (Section 31.) Such order may not be known to the landlord and therefore he should not be made responsible on that account. He ought to be held responsible, if he has been actually served with the notice.

Section 32—Provision should be made for cases where the landlord can successfully show cause why the transfer or succession should not be registered.

Section 33 gives the Zemindar no other advantage than that of realising the prescribed fee. In omitting to have his name recorded in the Zemindar's *Sherista* a transferee or his successor should be deprived of the power of realising rent from the ryots or of holding *khas* any land in the tenure, until he has applied for registration a penalty, similar in nature to that as has been

provided in the Land Registration Act (VII of 1876 B. C.) for the registration of permanent tenures, should be enforced. No provision has been made for the registration of transfers of all *ryoti* holdings. Custom holds in many places that a purchaser of a *jote* must pay to the Zemindar at least 2 or 3 years' rent to obtain his consent to the sale. Right of pre-emption, that is remedy against objectionable tenants, is not likely to be availed of by poor landlords who compose by far the majority of the landed class; hence poor zemindars will suffer loss.

Babu Kristo Chundra Sandel Chowdry of Mymensing:—Want of like provisions for the registration of occupancy holdings will put the Zemindar to great inconvenience. In the cases of dependent *Taluqdars* provisions should be made for opening separate accounts of rent in the Zemindar's *sherista*. Many *taluqdars* in this district have actually been ruined for having been repeatedly obliged to pay the rent of a lot of co-sharers in a village and then having to fight for contribution in the civil courts including the High Court. The liability of the share of which separate account has been opened, should be the same as that of zemindars under Act XJ of 1859.

Babu Satip Chandra Chowdry of Mymensing:—Transfers of *ryoti* holdings should be registered.

Babu Shyama Sankur Mojumdar of Furreedpur:—We do not consider the provisions contained in Sections 27 to 35 at all adequate, nor the paltry amount of fees provided for at all sufficient for the trouble and difficulty to be faced for the registry of transfers by succession, sale, gift &c., specially at the first instance. The matter will in the first instance be more difficult than the registry of landlords' names in the Collector's *Towji* under the Land Registration Act B. C.

Bhagulpur Association:—If transferability of occupancy holdings be conceded, then provisions for registration ought to be made.

Babu Surya Narayan Singh of Bhagulpur:—Under Section 28 an

application for transfer may, instead of being made to the landlord be made to any Revenue Officer appointed for the purpose by Government; but this provision is hardly necessary under Section 32, the Civil Court being the final referee. The application should in the first instance be made to the landlord and on his refusal to register the tenant's name, to the Civil Court as in Section 32. The transfer of *ijaras* and *dar ijaras* now do not affect the liability of the original holders to the superior landlord unless he consent to the alienation and substitute the liability of the transferee, but under the Bill he will be compelled to register the tranfers without even getting a security.

Raja Promotho Bhusan Dev Roy, Jessore. This section seems to me to be quite unnecessary and provocative of litigation; the Revenue Officer upon receipt of the usual fee "shall cause a notice to be served on the landlord requiring him to register the transfer or succession" and the landlord "shall be bound forthwith to comply with the requisition contained therein." But the landlord may have many cogent reasons for refusing to register such transfer and for the matter of that the tenure itself may not be transferable. Litigious tenants may try to worry the Zemindar through the revenue court. The landlord's refusal to register does not jeopardise the rights of the tenant. The provisions of Section 32 are in my opinion quite sufficient to afford relief to tenants in case of landlord's refusal to register their names.

Raja Purna Chundra Sing Bahadur of Paikpara:—I have grave objections to the compulsory registration of transfers of *ryoti* holdings.

Babu Kulada Kinkur Roy:—I do not think that the provisions for registration contained in Sections 27 to 35 are adequate.

Babu Durga Charan Bose, Mymensing:—Transfers of occupancy holdings should be registered.

Mahomed Ali Khan, Zemindar, Attea, Mymensing:—Sections 27 to 35 do not make adequate provisions for the registry of transfers. The landlord should be given the option of sanc-

tioning transfers and the right to demand securitry for payment of rent from the transferee before registering him as such. Some sort of penalty ought to be laid down for cases where the transferee omits to inform the landlord of the transfer and to apply for registration within the prescribed time.

Mr. R. Harvey, Manager, Paikpara Estate:—The provisions seem adequate, but would involve needless cost.

OCCUPANCY RYOT.—SEC. 45.

Babu Gopal Chunder Acharji Chowdhry of Muktagacha:—It would greatly affect the interests of landholders. It would render existing contracts void and give power to the ryot to lower the value of the land by digging tanks and felling trees and then abandoning the land.

Babu Sreenath Roy of Dacca:—These provisions would work very harshly against the zemindars. They would take away their proprietory rights.

Raja Radha Bullub Sing of Coochiacole:—Cause great loss to landholders.

Nawab Ahanulla of Dacca:—These provisions would convert all ryots into occupancy ryots. Consequently much loss would be caused to landholders.

The position of occupancy ryots would be more desirable than that of landholders.

Maharaja Sheoprasad Sing of Gidhour:—These would dangerously affect the rights of landholders.

Babu Bejoy Kissen Mookerjee of Utterpara:—It is a most obnoxious provision. It would deprive landholders of their vested rights.

Babu Charu Chunder Mullick of Calcutta:—This rule would remove the present distinction between zemindars and ryots. The former would be landlords only in name.

Babu Jadub Kishore Acharji Chowdhry of Mooktagacha :—This is most objectionable.

Babu Jogendro Kishore Roy Chowdhry of Ramgopalpore :—These provisions would be injurious to landholders, and the ryots also would not benefit by them because they prefer to exchange their holdings every 2nd or 3rd year.

Raja Shyama Sunker Roy of Teota :—Proceedings of a public meeting in which two hundred landholders were present. The proposal for the acquisition of rights as settled ryots is one sided and all in favour of ryots.

Babu Gobind Chunder Roy of Narail :—These provisions are extremely harmful. They will set landholders against ryots to the loss of both.

Mr. M. B. Morrison of Bhagulpore :—This is one of the most objectionable and outrageous sections of the Bill. By overriding contracts it would create great confusion and mischief and extinguish for ever the freedom of contract. It would convert most of those who have no occupancy rights into occupancy *ryots*.

Babu Komul Kishore Dutt of Mymensingh :—It is impossible to overrate the mischief which this provisions would create.

Babu Hem Chunder Chowdhry of Ambaria :—These provisions would be very injurious to landholders.

Raja Rajeswary Prasad Singha of Suryapore, Shahabad :—The rule contained in Sec. 45 would operate very injuriously in this district.

Babu Kally Kumar Roy Chowdry of Barripore :—This section would convert all ryots into occupancy ryots.

Babu Mohima Runjun Roy Chowdhry of Kakina :—This provision would be injurious to the rights and interests of the zemindars. There should be freedom of contract.

Babu Kally Prosunna Gajendro Mohapatro of Khuroye Shabra P. O :—This rule would not work well in this district. It would deprive landholders of the right to *Khas* possession in spite of contracts.

Babu Janoki Bullub Sen of Meheegunge, Rungpore :—This is a very arbitrary provision. It would demolish all rights hitherto enjoyed by landholders under the Permanent Settlement.

Raja Kistoodro Nath Roy of Balihar :—This provision would be very injurious to landholders. It is unjust and it would be a source of great evil.

Babu Radha Bullub Chowdhry of Sherepore, Mymensing :—This is a most unjust and arbitrary provision. It clearly sets at naught the rule as to 12 years' possession. It would strike a death blow to the rights of the zemindars.

Babu Raj Kumar Dutt of Noakholly :—It is a bold step in a direction in which it clashes with the declaration of Government made in 1793. It would virtually transfer property in soil to the ryots.

Babu Issan Chunder Chowdhry and Kalimohun Mookerjee Managers of Jagidhia Estate, Noakholly :—This section would tell most hardly upon single zemindars and tenure-holders. The law should not be extended.

Mahomed Ali Khan, Zemindar, Attea, Mymensing :—The rule will operate very hardly upon the zemindars of this district and will also seriously affect the rights of large estate-holders. Section 45, which has a retrospective effect, will confer more advantages on the ryots and give them more substantial interest in the land than the landlords themselves possess. Hence the relation between a landlord and his tenant will be anything but cordial.

Babu Pransunkar Roy Chowdry of Dacca :—This Section when read along with Sec. 47 would be most injurious to the interests of the landlord. The provision that no contract to the contrary &c. would have any effect, is anything but fair and just. The cultivation of certain class of lands used for sowing or transplanting *jali and boro dhan* would be impossible. Such lands are cultivated for one year only and in most cases become unfit for cultivation the next year. If they be included in the holding of the ryot he will be ruined. In respect of this class of lands,

contract for rate of rent is entered into before cultivation actually begins.

Just after the annual innundation, ryots go to inspect the fields and then contract with the zemindars to pay a certain rate of rent per bigha. This rent is collected by keeping the crop under distraint, for the ryots make themselves scarce as soon as they have threshed the corn out and got them safe at home. These lands are measured when the crop stands on them. In cases of these lands the following provisions of the Bill would cause great inconvenience to both parties.

(*a*). Acquisition of rights of occupancy in all lands held by a settled ryot notwithstanding any contract to the contrary.

(*b*). Making a previous contract for rent nugatory

(*c*). Disability of a landlord in making measurement within 10 years of one measurement (Section 133).

(*d*). Disability of a landlord to distrain the crop of the land for arrears of rent thereof unless by order of Civil Court (Chap. XIII).

Babu Kisto Chandra Sandel Chowdry of Mymensing says:—The proposed extension of the occupancy right is quite unwarrantable and is in direct contravention of the Permanent Settlement laws. There are vast tracts of *patit* lands (fallow) in this district. No ryot ever consents to take any quantity of these lands unless some tilled lands of A. I. class be added to it. Unless the Zemindar has the power to take away from the ryots lands on expiry of the term of the lease granted he cannot in any way reclaim waste lands and extend cultivation in this direction. By the proposed law not only the personal gain of the Zemindar but the very object of the Permanent Settlement will be interfered with. In the introduction of the cultivation of a new crop, yielding a more valuable outturn, some pressure must in the first instance be put upon the ryots to raise the crop; but if ryots be made as independent of the Zemindar as has been proposed, the introduction of new crops in this district will

virtually be stopped to the loss of both the Zemindar and the ryot.

In this district there are ryots whose lands on account of continued cultivation lose their fertility; whereas many ryots have a large quantity of fertile lands. In such cases it would be necessary to make the ryots intercharge some of their lands. But as that cannot be effected under the proposed law, so all ryots should some day or other suffer in consequence of the very law that is being made for their good.

Babu Satis Chandra Chowdry of Mymensing says :—These are most objectionable provisions. They would cause injury both to landholders and ryots.

Babu Shyma Sankar Mojumdar of Mymensing says :—These provisions would operate very prejudicially to the landlord and very favourably to the tenants. If that be the law, possession for 12 years of even one cotta of land in a village, though in a different estate belonging to a different landlord or in a distant village of the same estate, will confer on a ryot a right of occupancy to another or several plots of land containing hundreds of bigas held only for a very short time, say a year or a month ; this is extremely hard and unfair to the Zemindar.

Bhagulpur Association :—The rule would produce a disaster, seriously injure the rights of landlords and reduce the value of landed property. It introduces an innovation which strikes at the root of freedom of contract, and sanctions a policy which will fail to secure the object aimed at. Thousands of ryots who are at present tenants-at-will and who are quietly and contentedly paying rent deemed fair by themselves would find themselves strengthened by the proposed change in the law to fight with their landlords and resist their lawful demands. The change will create rights which never before existed and cause incalculable loss to owners of landed property. Capitalists who have invested money in land, will by a *fiat* of Government find themselves impoverished. But such exercise of legislative interference with the rights of private property lawfully acquired and

peacefully enjoyed, would be as unprecedented as unconstitutional. The change would be also impolitic, as the chances are that money-lenders and not the ryots will ultimately be benefitted by the law.

Babu Surja Narayan Sing of Bhagulpur :—The Bill does away with the existing law of occupancy of land for 12 consecutive years as essential to the acquisition of right of occupancy. It sanctions succession and furthermore makes each co-sharer a settled ryot. The last provision will give rise to an element of confusion which does not now exist.

The laws of inheritance will then apply to occupancy holdings and the universal custom of the country and the existing law with regard to their devolution on death will be cast aside. The courts will be deluged with plaints of succession to *ryoti* holdings and a fresh stimulus will be given to litigation. Freedom of contract is taken away by the Bill. A ryot will be a free agent everywhere else except before his landlord, whom he cannot approach save as a purfunctory being with no power to deal in matters affecting the acquisition of the right of occupancy. But in the alienation of his land he is allowed to settle the price of the holding with the Zemindar as best as he can. The general provision that a settled ryot shall acquire a right of occupancy in any land in the estate, is of such a nature that there is no precedent for it in the past or show of justice to support it. Khoodkasht or resident ryots as such did not without any regard to *prescription* acquire a right of occupancy in village lands. If it be said that the provisions of the Bill relative to occupancy holdings were founded on customary laws, were the Revenue Officers of the N. W. P., who revised the Rent Law of the said provinces in 1873 (i. e. 14 years after the passing of act X of 1859,) unaware of such laws; and do such laws prevail in any other quarter of India? The provisions of Sec. 5, relating to pre-emption and purchase by the landlord are but illusory as they do not confer any substantial advantages on him.

Raja Promotho Bhusan Dev Roy of Jessore :—The measures

embodied in the Bill in respect of occupancy holdings seem in my opinion to be arbitrary and not only do they tend to complicate more hopelessly the already complicated relations between landlord and tenant, but may interfere with the material prosperity of rural communities.

Raja Purna Chandra Singh Bahadur of Paikpara :—This is a great innovation upon the existing law and it will at once alter the status of almost all ryots. In fact almost all of them will become occupancy ryots. It is a most arbitrary definition of occupancy right. This provision will affect the rights of zemindars most materially and deprive them of three-fourths of their proprietory rights.

Babu Kulada Kinkur Roy :—Section 45 will act very injuriously to the zemindars in this district. By this Section there will be none but occupancy ryots.

Babu Durga Charun Bose, Mymensing :—These provisions are wholly unwarrantable. They would materially encroach upon the rights of landholders.

Mr. R. Harvey, Manager, Paikpara Estate :—The rule would no doubt operate unjustly, though to a comparatively small extent, upon the great mass of ryots possessing rights of occupancy, but the abolition of the right of contract in regard to occupancy rights is most objectionable.

ONE YEAR'S ABANDONMENT.

Babu Gopal Chandra Acharji Chowdry of Mooktagacha :—The landholders would lose 1 year's rent.

Babu Sreenath Roy of Dacca :—The time should be limitted to 6 months. The landholders should not be made to lose his year's rent.

Nawab Ashan Ulla of Dacca :—The land would be rendered fallow and the landholder would lose his rent.

Maharaja Sheoprasad Sing of Gidhour:—The landholder would lose his security for rent.

Babu Jadub Kishore Acharji Chowdry of Mooktagacha:—The Zemindar would be deprived of one year's rent.

Babu Jogendro Kishore Roy Chowdry of Ramgopalpore:—The rule is very objectionable.

Babu Raj Rajeswary Prosad Sing of Surjapur, Shahabad:—The Zemindar would lose his rent for the year.

Babu Mohima Ranjun Roy Chowdry of Kakina:—The provision would be injurious to landholders.

Babu Janoki Bullub Sen, Mahegunge, Rungpur:—This provision would sacrifice the landlord's interest for no body's benefit.

Raja Kuggendronath Roy of Balihar:—The Zemindar would lose his rent for one year and the land would also lose its letting value.

Babu Issan Chandra Chowdry and Kalli Mohun Mookergee managers of Jogidhia estate, Noakholly:—The land would deteriorate to the loss of the zemindars.

Babu Ram Sankur Roy Chowdry of Dacca:—No ryot with a good profitable land will follow this course. This provision will be taken advantage of by one whose land is almost not worth keeping. In this case the landlord will no doubt be the loser in having to wait for a long period without any assurance of getting his just demands.

Mr. W. M. Eddis, Manager Durbhanga Estate Purneah:—I think if a ryot has, by removing with his family and cattle, deserted his holding, he should not have a lien on it for a year, as that would prevent the settling of a new ryot till a year had expired.

Babu Kisto Chandra Sandel Chowdry Mymensing:—If the Zemindar be required to wait for one year to see if the absconding ryot returns, who shall pay his rent for that year.

Babu Satis Chandra Chowdry Mymensing:—The Zemindar should not be made to lose his rent for one year.

Babu Shyama Sankur Mojumdar, Fureedpur:—The period of at least one year mentioned in Section 46 for cessation of tenants rights by desertion &c. seems to be very long. Considering the stringency of the sun-set law and the difficulty of realising rent from a tenant who has deserted the land, three months or six months *at the most, should be the prescribed limit for the ryots' return*, on the expiry of the term the Zemindar will make suitable provisions for the cultivation of the land and the realisation of back rent.

Bhagulpur Association:—This will defer, to the detriment of the landlord, the settlement of land for one year certain, and is objectionable as quite an onesided measure made in favour of the ryots. The mere fact of desertion ought to entitle the Zemindar to re-entry into the land without any loss of time. The Zemindar will otherwise lose a year's rent.

Raja Purna Chandra Sing Bahadur of Paikpara:—It appears that Section 46 has been enacted to mitigate the rigor of Section 45. But practically it will do harm to zemindars by preventing them from taking possession of lands unless after expiry of one year of the tenants' relinquishment. This will make the lands lie fallow for a whole year and subject the Zemindar to loss of rent for the entire period. The deprivation of the freedom of making contracts must be considered as a great calamity to the country, and it will unjustly operate on the interests of zemindars. In the long run the measure will ruin the very persons for whose benefit it has been enacted.

Babu Kulada Kinkur Roy:—Section 46 tends to put the zemindars to greater inconvenience and loss and the time ought not to be more than three months.

Babu Durga Churn Bose, Mymensing:—Who will pay the landlord's rent if he has to wait for full one year?

Mahomed Ali Khan, Zemindar, Attea, Mymensing:—This rule would seriously affect the interests of the zemindars. Who shall pay the rent for the year if the ryot does not return? Loss of rent goes very hard against zemindars.

Mr. R. Harvey, Manager Paikepara Estate:—The term of a year seems too long, 3 or 6 months desertion should be sufficient. After waiting a *year* from whom is the Zemindar to get his rents for nonpayment of which he may be sold up once a quarter by Government?

ANSWER TO QUESTION 13. WHETHER A OR B's OFFER &c.

Babu Gopal Chundro Acharji Chowdry of Mooktagacha:—The offer of A. is more profitable to landhoders than the offer of B.

Babu Sreenath Roy of Dacca:—The consequences will be that ryots of class B. will have to work as laborers under ryots of class A.

Babu Radha Bullub Sing of Koochiacole:—Ultimately both will suffer.

Nawab Ashanulla of Dacca:—Offer of B. would be more profitable to the landholders; but both will suffer in the long run.

Maharaja Sheoprosad Sing of Gidhour:—The offer of B. would be more profitable to the landholders than the offer of A.

Babu Jadub Kishore Acharji Chowdry of Mooktagacha:—The offer of B. is preferable to that of A.

Babu Charoochunder Mullick of Calcutta:—The offer of B. is of course most advantageous to the landholders.

Babu Komul Kishore Dutt of Mymensing:—The offer of B. is certainly more profitable to the landholders.

Babu Raj Rajeswary Prosad Sinha of Suryapur, Shahabad:—The offer of B. would be more profitable to the zemindars.

Babu Kally Kumar Roy Chowdry of Barripur:—The offer of B. would be of course more acceptable to the zemindars.

Babu Mohima Runjun Roy Chowdry of Kakina:—The offer of B. would be more favourable to landholders.

Raja Kistendro Nath Roy of Balihar:—The offer of B. would be favourable to landholders.

Babu Radha Bullub Chowdry of Sherpur, Mymensing:—The offer of B. is preferable.

Babu Pran Sankur Roy Chowdry of Dacca:—B. being poorer of the two, his competition with A the richer man will oblige him either to work some day or other as A.'s day-laborer or to eventually turn out a vagrant.

Mr. W. M. Eddis, Manager, Purneah:—I think it would be to the Zemindar's interest to take B's offer. B. would not offer it unless it was to his advantage to do so, unless there was an unnatural competition, that is competition from causes other than the productive powers of the land. This sort of competition the Zemindar should not encourage.

Babu Kristo Chandra Sandel Chowdry, Mymensing;—I think the offer of B. would be more profitable to the Zemindar; and if that ryot be an industrious person his interest will not suffer by his act. Higher rate of rent is more acceptable to the Zemindar because it secures a permanent gain and enhances the value of his property; and it is acceptable to the ryot because it saves him the necessity of borrowing money at an enormous interest and the payment of a small sum as increment for one year does not carry with it so much risk and danger as payment of a borrowed bonus money. There are many poor ryots for whom it is nearly impossible to raise the necessary loan. The provisions of the Bill would compel the Zemindar to let the occupancy holding he has acquired, at the rate prevailing in the neighbourhood, and for ever prevent the poor ryots from taking a lease of such holdings; consequently poor ryots will be gradually compelled to serve as day-laborers under wealthy ryots.

Babu Shyama Sankur Mojumdar of Furreedpur:—We are strongly of opinion that zemindars and ryots will both suffer in the long run, if offer like that of B. be discouraged or prohibited. The ultimate condition of B. in the event of such prohibition, will be that he will be reduced to the position of day-laborer under A. and will be for ever precluded from attaining the position of A.

As the generality of the tenants are poor and incapable of paying a suitable bonus to Zemindar, a large number of money lenders will come to the field, make themselves lessees and reduce the actual cultivators as B. to the condition of day-laborers under them.

Bhagulpur Association :—It often happens that the offer of B. proves more profitable to the landlord than that of A. And it *does not always happen that the offer of B, is suicidal to his own* interests. If the amount of the *bonus* be large, the Zemindar would probably find the offer of A. more profitable than that of B. In considering this question, however, it must not be forgotten that any arrangement that would delay enhancement of rent for a long period, would increase the difficulty of the Zemindar by reason of the operation of the presumption. Zemindars and ryots will both suffer in the long run by the prohibition or discouragement of offers like those of B; for generally it is easier for a ryot to pay a moderate increase than to pay a lump sum at once, with the prospect of his rent being increased under the provisions of the Bill. Then again, if offers like those of A. are encouraged and offers like those of B. are discouraged, the result would be the introduction of the mahajan class of tenants who would acquire holdings and let them out to the ryots of the B. class. The ultimate condition will be as is foreshadowed in the last question.

Raja Purna Chandra Sing Bahadur, Paikpara :—B's condition will be greatly altered by reducing him to the position of a day-laborer.

Babu Kulada Kinkur Roy :—The offer of B. is always more profitable to the Zemindar than that of A. It is very seldom suicidal to B.'s interest. I think both landlord and tenant will in the long run suffer by the discouragement of offers like that of B. The provisions of the Bill will for ever seal the doom of B. and make him a day-laborer.

Babu Durga Churn Bose, Mymensing :—The Zemindar would certainly prefer B's offer.

Mahomed Ali Khan, Zemindar, Attea, Mymensing:—The offer of B. is more profitable to the Zemindar. B's offer will not always prove suicidal to his own interests. Both Zemindar and ryot will, in the long run suffer, if offers, like those of B. be discouraged or prohibited. The provisions in the Bill will for ever prevent B. from growing into the circumstances of his affluent brother A. and will make him ultimately to work as a day-laborer under A.

LETTING OUT KHAS LANDS.

Babu Gopal Chunder Acharjya Chowdry of Muktagacha:—Deprives the landholders of an important privilege. There is no custom which restricts the landholder's right to let out such land in any manner he pleases.

Babu Sreenath Roy of Dacca:—This is certainly objectionable. Zemindars should not be deprived of their right to deal with such lands at pleasure. The restrictions to freedom of contract is not in consonance with reason or custom, specially when the ryot's ability to contract for all other purposes remains intact. Why should the landholder pay the full price of the new ryot as to get the land with O. R?

Babu Radha Bullub Sing of Coochiacole:—The landholder should have a right to let such lands at his pleasure. It is but just that he should have such a right.

Nawab Ashan Ulla of Dacca:—The restriction is inconsistent with custom. It is detrimental to the rights of landholders and unsafe as regards the security of Government Revenue. It is very objectionable. The right does not attach to the land but it is a personal right.

Maharaja Sheopersad Singh of Gidhour:—The restriction is not sanctioned by custom. It would prevent the landholders from getting his due. It would be a most objectionable provision.

Babu Bejoy Kissen Mookerjee of Utterpara:—This rule would facilitate the ruin of landholders.

Babu Jadub Kishore Acharji Chowdry of Mooktagacha:—This is quite contrary to present custom, ultimately the security for Government revenue would suffer.

Babu Charoo Chunder Mullick of Calcutta:—This is most objectionable. The right can be acquired only by possession for 12 years.

Babu Jogendro Kishore Roy Chowdry of Ramgopalpur:—The restriction is very unjust, and quite repugnant to the present custom. It endangers the security of Government revenue.

Babu Gobindo Chunder Roy of Narail:—The restriction to the landholder's right to let out such lands to his best advantage would be extremely harmful. They would be deprived of the means of compensating themselves for the loss they suffer by deluvion, relinquishment, and from other sources. Government revenue would ultimately suffer.

Mr. M. B. Morrison of Bhagulpur:—A provision restricting the landholder from letting such land to the best man for the best offer is opposed to the right of ownership and detrimental to the rights of landholders.

Babu Komul Kishore Dutt of Mymensing:—This provision would destroy the proprietoy right of landholders. It would ultimately induce landholders to give up their estates and to buy occupancy holdings in the estates of other landholders.

Babu Hem Chunder Chowdry of Ambaria:—These provisions would be contrary to established custom and unsafe both as regards Zemindar's rights and the security of Government revenue.

Babu Raj Rajeswary Prosad Singha of Suryapore, Shahabad:—The restriction to the Zemindar's right is opposed to custom and unsafe as regards the security of Government revenue.

Babu Kali Kumar Roy Chowdry of Barripur:—These provisions would be very injurious to the interests of zemindars. They are opposed to usage and tradition. It is the ryot and not the holding which acquires a right of occupancy. It is a gross injustice to the landholder.

Babu Mohima Runjun Roy Chowdry of Kakina:—This would be contrary to existing practice and injurious both to Zemindar and Government.

Raja Kally Prossuno Gojendro Mohapatro of Shabya:—This rule would be objectionable. It would be opposed to custom. It would deprive landholders of their dues. The landholder should have absolute control over such lands.

Babu Janoki Bullub Sen of Mehegunge, Rungpur:—The landlord *should be quite unfettered in letting out such lands. This* would be a direct interference with rights of landlords and it would at the same time hamper all improvement of land, when rents are enhanced, ryots as a rule try to improve the lands and raise more crops therefromthan what they did when rents were low.

Raja Kistendro Nath Roy of Bolihar:—This provision would be very harmful to landholders. It would prevent them from getting their just dues. It is unjust and extremely objectionable.

Babu Radha Bullub Chowdry of Sherpur, Mymensing:—This would unjustly interfere with the immemorial rights of landholders.

Babu Raj Kumar Dutt of Noakholly:—This is objectionable in the extreme. What can be more inequitable than this? The ryots would get better of the real proprietor of the soil.

Babu Issen Chunder Chowdry and Kally Mohun Mukerjee managers of Jogidhia Estate of Noakholly:—Ask why should contracts be subject to the approval of a revenue officer.

Babu Pran Sankur Roy of Dacca:—The principle of the Bill as regards letting out *ryoti* lands which came to the disposal of the Zemindar is inconsistent with the prevailing customs and usages of the country. According to the custom now in vogue, all unoccupied lands are at the entire disposal of the landlord; but the Bill empowers a new-comer to encroach upon the right of the Zemindar by usurping a portion of his interest. Zemindary right is liable to sale four times a year for arrears of Government revenue; but the Zemindar is stringently precluded from touching

the land, except through the civil courts, when his own ryots are defaulters; besides he must wait for a year or so before he can have his just dues. The Zemindar should therefore lay by a good capital to meet Government demand, costs of law-suits &c. whereas the ryot will derive, quite unsolicited, a great benefit in having his lands secured from the demands of the zemindars.

Mr. W. M. Eddis, Manager, Purneah:—The restriction is most unjust. Where the rates are notoriously too low such a restriction as that in section 61 would fetter the Zemindar's hands, and hamper his arrangments for the settlement of ryots on his estate and prevent collection of rent from which he has to pay the Government revenue.

Babu Kisto Chunder Chowdry, Mymensing:—Ryots may relinquish their holdings the fertility of which has been diminished by continued cultivation or by other causes and if the lands of other holdings which are fertile cannot be let at a rate higher than that proposed, Government revenue too may in the long run be endangered.

Babu Syama Sankur Majumdar, Fureedpur:—The restriction disallowing the Zemindar from letting out *ryoti* land at his option, to even tenants-at-will or at rates as may be agreed upon between them (*i. e.* in excess of the sum fixed by law) is not consistent with any custom or usage that we know of, nor is it safe for the realisation of Zemindar's dues, and of the Government revenue. If the parties agree to a higher rent and no one else is prejudiced by the contract, and the land is capable of yielding the increased rent, I cannot concieve why the legislature should prevent it.

Raja Purna Chandar Sing Bahadur, Paikpara:—The rights proposed to be given to occupancy ryots are not based, as far as I am aware, upon any custom or usage. It will be neither safe for the realisation of Zemindar's dues nor of the Government revenue if zemindars be not allowed to select their own ryots and make their own arrangements in settling rent. I do not at all understand the

justice of the law which takes away so much of the proprietory right of zemindars.

Babu Kulada Kinkur Roy :—The restriction proposed is inconsistent with any custom or usage I know of. It is not safe for the realisation of Zemindar's dues or of Government revenue. This restriction is unfair and opposed to principles of contract. The proprietory rights of the Zemindar will be very much prejudiced thereby.

Babu Durga Churn Bose, Mymensing :—The Zemindar's right to make his own arrangements or to fix rates of rent for *khas* lands should he left unfettered; otherwise how would he be able to make up for losses caused by relinquishments of bad lands?

Mr. R. Harvey, Manager Paikpara Estate :—No, such a restriction seems improper and opposed to custom.

Mahomed Ali Khan Zemindar, Attea, Mymensing :—The restriction prohibiting the Zemindar to let out *ryoti* land at his option to *terre tenants* at rates agreed to by the applicant is inconsistent with any custom or usage I am aware of. And it is not safe for the realisation of Zemindar's dues and of the Government revenue either.

SALEABLE OCCUPANCY RIGHT.

Babu Gopal Chunder Acharji Chowdhry of Muktagacha :—The right of pre-emption is incomprehensible. Why should a landholder give money to buy his own land and then let it to a ryot who shall have a saleable right therein?

Babu Sreenath Roy of Dacca :—The proposal to make right of occupancy saleable is very objectionable. It would place weak zemindars at the mercy of powerful neighbouring zemindars The right of pre-emption is a sham. It gives you the right to purchase what already belongs to you by right of purchase.

Babu Radha Bullub Sing of Koochiacole:—The objection to the saleability of occupancy right is not removed by giving the landholder a right of pre-emption.

Maharaja Sheoprasad Sing of Gidhour:—The pre-emption sections do not remove the objections to the saleability of occupancy holdings. It would be a direct violation of the rights of zemindars. Why should the landholder pay a price for purchasing such holdings? Specially as he would be no gainer by the purchase. It would be a fine upon him for his desire to keep out a hostile or undesirable purchaser.

Babu Bejoykissen Mookerjea of Utterpara:—The provision is most objectionable. It would be a spoliation of the rights of landholders.

Babu Jadubkissore Acharji Chowdhry of Muktagacha:—The ryots themselves would suffer by the rule. These provisions would cause a regular revolution. Why should the landlord buy his own land over again? Occupancy rights are not saleable without the consent of landholders.

Babu Charu Chunder Mullick of Calcutta:—The Bill ought to provide on the other hand that by a transfer the right of occupancy shall cease.

Babu Jogendro Kissore Roy Chowdry of Ramgopalpore:—Occupancy holdings should be saleable only with the consent of landholders.

Raja Shyma Sunker Roy Chowdhury of Teota:—Proceedings of a public meeting in which 200 landholders were present. The provisions for the sale of occupancy rights are all in favour of ryots.

Babu Gobind Chunder Roy of Norail:—These provisions are alike unjust and inexpedient. They would cause great loss specially to poor landholders who would be unable to find means for the exercise of the right of pre-emption or to institute suits against their ryots. Suits in court are ruin to poor landholders. At present such holdings are never sold without the landlord's consent.

Mr. M. B. Morrison of Bhagulpore:—Far from being a concession made in favour of landholders the right of pre-emption

would be the infliction of a penalty on them. It would in no way justify the provision for the sale of occupancy holdings.

Babu Komul Kishore Dutt of Mymensing:—The right of pre-emption would be a nominal right. The money which the landholder must pay would be money thrown away, and all zemindars have not even the means to buy the holdings. Occupancy holdings should never be sold without the consent of *landholders*.

Babu Hemchunder Chowdhury of Ambaria:—A right of pre-emption would not remove the objections to the transferability of occupancy holdings. They are never sold without the consent of the landlord.

Babu Raj Rajeswary Sing of Saryapora, Shahabad:—A right of pre-emption would not remove the objection. Large zemindars would consider it troublesome to buy occupancy holdings if small zemindars would have no means for buying them. Such holdings are never sold without the consent of the landlord.

Babu Kally Kumar Roy Chowdhry of Barripore:—The right of pre-emption granted to the Zemindar is nothing but a vague and imaginary right which has almost no practical value. Again all zemindars are not wealthy and it would be quite immaterial whether they have the right or not.

Babu Mohima Runjun Roy Chowdry of Kakina:—Sales of occupancy holdings should be allowed only with the consent of zemindars.

Babu Janoki Bullub Sen, of Maheguing, Rungpore:—The provision would only increase litigation and create ill feeling between zemindars and ryots. Such transfers are wholly dependant on the landlord.

Raja Kistendronath Roy of Balihar:—This provision would be very injurious to landholders. The right of pre-emption would not remove the objections. It would only lead to litigation. It is well-known that ryots frequently combine with a view to injure their landlords. This provision would place landlords at their mercy.

Babu Radha Bullub Chowdry of Sherpur, Mymensing:—The right of pre-emption would not remove the objection to saleability of occupancy holdings. The right would go for nothing. At present such sales require the consent and sanction of landlords.

Babu Rajkumar Dutt of Noakhally:—A provision for the sale of occupancy right would be extremely objectionable. It would in fact take away the proprietory right in the soil from the landlords and rest it in the ryot. The right of pre-emption would be ineffectual and the provision would be ruinous to landholders.

Babu Issan Chunder Chowdry and Kali Mohun Mukerjea, managers of Jogidhia Estate, Noakhally:—This provision would revolutionise the existing state of things and create great discontent. It would transfer property in land to the ryot. The ryots would also suffer. They do not know what thrift is and they would be entirely at the mercy of creditors.

Babu Ram Sunkur Roy, Dacca:—By this provision the landlord is unnecessarily deprived of the privilege of enjoying the benefit of that for which he has paid the full value.

Babu Kristo Chunder Sanyal Chowdry of Mymensing:—If this section (56) is intended to dissuade the zemindars from buying occupancy rights why the right of pre-emption is allowed them?

Babu Satis Chunder Chowdry of Mymensing:—Of what use would be the right of pre-emption in the face of Sec. 56?

Babu Shyama Sankur Mojumdar, Furreedpur:—The provision in Sec. 56 that a person to whom land of an occupancy tenant which has come to the khas possession of the landlord is let, shall have the right of occupancy is particularly objectionable. It unjustly curtails the right of the landlord to make any kind of settlement, temporary or otherwise which he might think proper and convenient and makes his position worse than that of an ordinary purchaser and renders infructuous the main object of his right of pre-emption.

Bhagulpur Association:—This is objectionable as it is not founded on principles of justice. The provision is arbitrary as it

restricts the Zemindar in disposing of his property to his advantage.

Babu Surjee Narain Sing, Bhagalpur:—The giving of a right of transfer and bequest is open to objection. A ryot may have *right of occupancy at a variable rent in his homestead land, but* that he shall have the power of alienation of such land is against the custom of the country.

Raja Purna Chunder Sing, Paikpara:—I consider these provisions as outrageous in the extreme. What does the right of pre-emption mean if the zemindar is not entitled to acquire by purchase all the rights of the foregoing tenant? If the effect of the purchase of the rights of an occupancy ryot be to create another again, who on earth would go to make such a purchase? I do not know language strong enough to condemn such partial legislation.

Babu Kulada Kinkur Roy:—Sec. 56 is objectionable on the following grounds:

(a.) It curtails the rights of Zemindars.

(b.) Renders his position worse than ordinary purchasers.

(c.) And the provisions of Secs. 51, 53, become useless to him.

Babu Durga Churn Bose, Mymensing:—These provisions are very objectionable. Of what use would be the right of pre-emption?

Mahomed Ali Khan, Zemindar, Attea, Mymensing;—Section 56 is very objectionable. The landlord shall have to buy an occupancy tenure, that is to say he shall have to repurchase what he once bought, for a full consideration and he ought in common justice be left to deal with it as other khas lands and on such terms as he deems proper. A new ryot who does not stand in the shoes of the former occupant, but comes upon his holding, ought not to acquire his predecessor's privileges.

Mr. R. Harvey, Manager, Paikpara Estate:—This Section is most objectionable. A right of occupancy once purchased whether

by the Zemindar or any one else should be *his* to deal with it as he chooses, and if he wishes to let out the holding for say 5 years at an enhanced rate, why should he be precluded from doing so? There is nothing to prevent an occupancy ryot subletting his *Jumma* at a profit, why then should there be a penal clause referring only to the *Zemindar?*

ONE-FIFTH GROSS PRODUCE, RESTRICTION TO FREEDOM OF CONTRACT.

Babu Radha Bullub Sing of Koochiacole:—The landholders should get at least ⅓ the value of produce as rent and contracts between him and his ryots should be binding.

Nawab Ashan Ulla of Dacca:—The limitation on the freedom of contract is not necessary nor desireable. The landholder's claim to rent should be limitted to half the value of produce.

Maharaja Sheoprosad Sing of Gidhour:—The restrictions show that it is the policy of Government to degrade the landholders in every way. The restrictions are simply arbitrary.

Babu Bejoy Kissen Mookerjee of Utterpara:—These rules are extremely arbitrary and most objectionable. The difficulty of testing kobuliats would be almost insurmountable.

Babu Jadub Kishore Acharji Chowdry of Muktagacha:—These provisions are very objectionable. They are altogether unreasonable. The ratio of rent to produce should not be fixed. Why should the ordinary rules of contract be interfered with?

Babu Jogendro Kishore Roy Chowdry of Ramgopalpur:—I shall have no objection if one-fifth be made the rule for all kinds of produce.

Raja Shyama Sunker Roy of Teota:—Proceedings of a public meeting in which 200 landholders were present. The restriction to voluntary contract and the limitation of maximum rent to one-fifth the value of produce is one-sided and all in favour of ryots.

Babu Gobind Chunder Roy of Narail:—These provisions

are very objectionable. They encroach upon the rights of landholders. There are no ryots at the present day who do not understand their rights or are incapable of entering into contracts affecting their rights.

Mr. M. B. Morrison of Bhagulpur:—The limitation to the freedom of contract would do nobody good.

Babu Komul Kishore Dutt of Mymensing:—These provisions are not only not necessary but they would also prove very injurious to landholders. Half the share of the gross produce should represent the rent.

Babu Hem Chunder Chowdry of Ambaria asks why should landholders pay money for purchasing *ryoti* land if they be prevented from letting them to tenants-at-will? The restriction to freedom of contract is neither necessary nor desireable.

Babu Raj Rajeswary Prosad Sing of Suryapura, Shahabad:—These restrictions would make the purchase of holdings by zemindars mere waste of money. The restrictions to contract are neither necessary nor desireable.

Babu Mohima Runjun Roy Chowdry of Kakina:—This is objectionable, freedom of contract should not be interfered with.

Babu Kally Prosunno Gojendro Mohapatro of Shabra. This restriction is very objectionable. It would be very unjust to landholders.

Babu Janoki Bullub Sen of Mahegunge, Rungpur:—This provision would be a direct interference with the private rights of landholders. It is arbitrary and it would affect the well-being of both the classes of people concerned.

Raja Kistendro Nath Roy of Balihar:—The limitation imposed upon contract and the amount of rent would be very injurious to landholders. It would be very unjust.

Babu Radha Bullub Sing of Sherpur, Mymensing:—Such limitation on the freedom of contract would be detrimental to the interests both of Zemindars and ryots. Higher rates of rent already obtain in many places.

Babu Raj Kumar Dutt of Noakholly:—These provisions cannot be objected to too strongly. They would certainly work the ruin of landholders.

Babu Issan Chunder Chowdry and Kally Mohun Mukerjee managers of Jogidia Estate, Noakhally:—The ratio should be raised to half the value of gross produce. If such contracts be invalid why should landlords be held fast by contracts stipulating protection? There are many landlords who are equally ignorant of enhancement.

Babu Pran Sankur Roy:—The rates definitely put down in the Section contravenes what is contained in section 76 of the Bill where the limit has been fixed at double the previous rent. By allowing this Section to stand, great difficulty will be felt in private adjustments and a strong stimulus will be given to ruinous litigation.

Mr. W. M. Eddis, Manager, Purneah:—The provisions of the Bill apparently aim mainly at removing abuses supposed to exist, or that might exist in districts densely populated where the supply does not meet the demand for land and where the rent may be supposed to be fairly high, possibly too high. The Bill takes no account of districts where the conditions are otherwise. A time may come when these conditions will change.

This section might work very unjustly. Supposing a ryot had been paying /6/ per bigha, while the fair rate was 1/8, why should /6/ be the limit to enhancement and further enhancement not be allowed for 10 years?

If the fair rate is 1/8, why should the fact of the ryot having held it for years at /6/ debar the Zemindar from a just increase? Suppose an estate, outlying, unhealthy and subject to the devastations of a vicious river, pays less than the Government demand of revenue. The Zemindar to recoup his loss takes care to settle ryots there at a cheap rate of rent. Suppose its resources develope and unhealthiness disappear and there is a demand for land, and the ryot is asked for an increase of rent. The rates for similar

lands in adjacent districts are from 2/8 to 4/. As this law prohibits *enhancement above /6/ and that at intervals of 10 years, it will* be 60 years before the rate will be 2/8. There should not be a hard and fast line as to limit of enhancement.

Babu Kristo Chandra Sandel Chowdhury, Mymensing :—The provision of Section 59 is exceptionable inasmuch as it requires all ryots to be considered as minors or lunatics in their dealings with the Zemindar. They are deemed capable of acting for themselves everywhere else except with the Zemindar. The generality of the ryots of the Mymensing District are notoriously improvident. They borrow money on the strength of their hopes of having a plentiful crop that they have either sown or are about to sow. If for some cause or other the crop fails, he has got nothing more to sell except his tenancy. He has no resources to buy lands from his neighbours. The provisions of the Rent Bill preclude him from taking land at a higher rate of rent. These ryots then must turn out day-labourers. The middle men will rise at the sore cost of the ryot for whose protection and welfare the New Bill has been introduced. Freedom of contract which can only save the poor ryot from serfdom, should therefore in the interests of the tenants, never be interfered with.

Transfer by succession, too, will be a source of unprofitable discord among the ryots. Brothers will fight with each other for having a certain patch of land among the lands left by their fathers.

There are different rates at different villages and there are different rates in the same village also. One village under two zemindars shows two different rates. The idea of fixing a limit, up to which rent will be enhanceable should be given up. If a limit is at all to be fixed it should not be one-fifth of the gross produce in staple crops as proposed, it should be no less than one-third of the entire produce.

Babu Satis Chandra Chowdhury, Mymensing :—The ratio is very low. The attempt to fix a maximum limit should be given up.

Babu Shyama Sankur Mojumdar, Furreedpur :—It is not at all *necessary or desirable, and is highly unjust and impolitic to put a* restriction on the freedom of contract between landlord and tenant, as has been done in Section 59. The necessity for approbation of a revenue officer in cases of enhancement by contract would be a matter of hardship, vexation and harassment to both parties. We strenuously object to the maximum rate fixed, *viz.*, one-fifth of the produce. If a maximum be at all necessary it ought to be $\frac{3}{8}$ths and in that case the minimum should also be fixed at $\frac{1}{4}$th.

Bhagulpore Association :—Not desirable at all. The limitation on the freedom of contract is neither necessary nor desirable The restrictions to enhancement are so many that they practically make enhancement impossible.

Babu Surja Narayan Sing, Bhagulpore :—If the rule of proportion is maintained why should another rule fixing the maximum rent at 1/5 of the gross produce be introduced? The rule hardly does justice to landlords.

Raja Pramatha Bhusan Deo Roy, Jessore :—The effect of fixing the limit of money-rent by 1/5 of the estimated average annual value of the gross produce of the land would prove disastrous to the zemindars. I propose that $\frac{3}{8}$ths of the estimated average annual value of the gross produce should be the zemindars' share in money-rent.

Raja Purna Chunder Sing, Paikpara :—The provisions of Sections 59, 60 and 61 are all new. The state of the country and the condition of the ryots do not at all call for those unjust and unnecessary provisions. Freedom of contract has been recognised in all ages and in all countries; but the legislature of this country has been deviating from the principle without any reason or occasion for it. To place the contractor and the contractee under inquisition is extremely unpleasant. Again to put statutory limits to the freedom of the contracting parties,

in settling their own terms, is a thing which ought not to enter the statute book of a civilised Government.

Babu Kulada Kinkur Roy :—Section 59 is not at all necessary or desirable. It would be inconvenient and harassing to both parties. It is quite useless to restrict one's free will.

Babu Durga Churan Bose, Mymensing :—The provisions are very objectionable. The ratio is much too low and the restriction on freedom of contract wholly unjustifiable.

Mahomed Ali Khan, Zemindar, Attea, Mymensing :—It is not at all desirable that there should be any limitation put on the freedom of contract.

Mr. R. Harvey, Manager, Paikpara Estate :—No—The principle requiring the interference and the approval of a Revenue officer to the private contracts, entered into between Landlord and Tenant, is improper and unnecessary, and will in most cases interfere much with contracts, and in case of the 'officer' being crochetty or a hair-splitter he will probably *stop* them. The limitation, in addition, of enhancement is undesirable. The whole procedure will only lead to expense and confusion. Why should it be needful that a private bargain for *land* be not only registered but subjected for approval, and if supposed needful, for *veto* of a local officer, and in addition a limitation to enhancement be enforced? It looks as if the Legislature entertained the most supreme contempt for the ability of those interested in land to come to a fair agreement, or make a fair *bargain* among themselves. Why should it be needful to refer to a Government officer in everything? No such inference is allowed in rates of produce, indigo or goods of any kind, between the parties.

TABLES OF RATES. EXECUTIVE OFFICERS.

Babu Gopal Chunder Acharji Chowdry of Muktagacha :—Cause unnecessary expenditure.

Babu Sreenath Roy of Dacca:—Every attempt to prepare a table of rates will give rise to a crop of litigation.

Babu Radha Bullub Sing of Koochiacole:—The provisions are impracticable.

Nawab Ashanulla of Dacca:—It is desirable that rates of rent *should be fixed by judicial instead of executive officers. The proposed tables of rates would not remove difficulties.*

Maharaja Sheoprasad Sing of Gidhour:—The objections to the proposal are many; great power, will be given to Revenue Officers. The rates should be determined by judicial enquiry.

Babu Bejoy Kissen Mukerjea of Utterpara:—The rules are as unjust as they are impracticable. The vast machinery that will be required for the work, the cost, and the worthlessness of such tables should induce the legislature to abandon the scheme.

Babu Charu Chunder Mullick of Calcutta:—The work of fixing rates should properly be entrusted to judicial officers.

Babu Jadub Kishore Acharji Chowdry of Muktagacha:—The law suits relating to enhancement would cause the ruin of many a Zemindar.

Babu Jogendra Kishore Roy Chowdry of Ramgopalpore:—Rates of rent should be adjudged by judicial and not by executive officers.

Babu Gobind Chunder Roy of Narail:—There are several Revenue officers who know nothing about the rates of rent. Tables of rates would therefore not only cost large sums of money but they would be in many cases worthless. This would complicate instead of simplifying matters.

Mr. M. B. Morrison of Bhagulpore:—It would be better and safe to leave the settlement of rates to judicial instead of to executive authorities. If, however, officers of experience be employed some difficulties may be surmounted.

Babu Komul Kishore Dutt of Mymensing:—These provisions would prove dangerous both to zemindars and ryots. They would

be put to heavy expence and the result would not be so satisfactory as rates determined by judicial enquiry.

Babu Hem Chunder Chowdry of Ambaria:—Rates of rent should be determined by judicial authorities. The principles laid down for the preparation of tables of rates are unjust and unreasonable.

Babu Raj Rajeswary Singha of Suryapur, Shahabad:—Great confusion would arise if rates of rent be fixed by executive officers. The proposed tables of rates would increase the difficulties of enhancement of rent and zemindars and ryots would both suffer by such tables.

Babu Kally Kumar Roy Chowdhury of Barripore:—The rates of rent should not be fixed by revenue officers. The directions given in the Bill for the preparation of tables of rates will appear childish to all who have any knowledge of zemindary affairs.

Babu Mohima Runjun Roy Chowdry of Kakina, Rungpore:—Determination of rates of rent by executive authorities instead of judicial is objectionable. The procedure suggested would not remove the difficulties in the way of enhancement of rent.

Babu Janoki Bullub Sen, Mahegunge, Rungpore:—Far from removing difficulties in the way of enhancement of rent the procedure contained in this chapter would practically stop enhancement of rent.

Raja Kistendro Nath Roy of Balihar. These provisions would simply lead to dispute and litigation. The rates of rent should be determined by judicial officers as at present.

Babu Radha Bullub Chowdry, of Sherepore, Mymensing:—The principles on which tables of rates are proposed to be prepared are not just and reasonable. They won't remove practical difficulties in the way of enhancement of rent.

Babu Raj Kumar Dutt of Noakhally:—The principles on which tables of rates are directed to be prepared are unjust and improper. Rates of rent should be judicially determined.

Babu Issan Chunder Chowdhury and Kally Mohun Mookerjea.

Managers of Jogidia Estate, Noakhally :—More injustice would be done than at present to landlords and tenants by such mechanical means.

Babu Pran Sankur Roy, Dacca :—The principles set down for the preparation of the Tables are not only objectionable, but their reduction to practice with justice to all concerned, would be almost impossible. The situations and circumstances of land in a single district are so varied that any attempt for a general classification of them would be a failure and an impossibility. In East Bengal almost all the Pergunnahs are so sub-divided or so mixed up with one another that any general classification of them would be useless. If small tracts of country of an uniform nature be taken in hand at a time, partial relief will be found from enhancement suits. In the preparation of price-lists all parties concerned in the land should previously be consulted.

Mr. W. M. Eddis, Manager, Durbhanga Estates, Purneah :—The procedure suggested will not work to the advantage either of the Zemindar or the ryot. To collect all the information as to neighbouring rates, proportions of this and that, how increase of productive powers has been brought about, will often be impracticable and result in the land lying waste. Such an expenditure of labor, money and time would be required as would harass and ruin the Zemindar and be of no good to the ryot. It is not the landlord's interest to ask too much. The ryot is being educated to offer too little. If interference is necessary something more in the way of judicial arbitration as proposed in Chapter XI., but eschewing the delay, expence and uncertainty of reference to the Civil Courts, should be adopted.

Babu Kristo Chunder Sandel Chowdhury, Mymensing :—In my opinion the rates of rent should be determined by the executive, but appeals should be allowed to the District Judge against all orders passed by the former.

Babu Shyama Sankar Mojumdar, Furreedpore :—Considering the great difficulty, if not impossibility of getting a decree for

enhancement of rent under the law now in force, we should rather see how far the executive officers can help us in the matter.

Bhagulpur Association:—There is serious objection to rates of rent being fixed by the executive instead of by the civil authorities as provided for in Chapter VI. The executive authorities will not proceed judicially and a good deal of power will be given to the Board of Revenue and the local Government before whom the interests of the parties concered cannot properly be represented, and this power it is desirable that they should not have. The principles on which tables of rates are to be prepared are not just and reasonable and the procedure suggested will not remove practical difficulties in the way of enhancement.

Babu Surja Narayan Sing, Bhagulpur:—These provisions are not required and are not likely to be useful.

Raja Purna Chunder Sing, Paikparah:—The rate of rent ought to be fixed by the judicial authorities and not by the executive. The principles upon which the tables of rates are directed to be prepared are not just and reasonable and the procedure suggested will not remove practical difficulties in the way of enhancement of rent. The provisions are not all wanted and it would be difficult to bring the matter to a practical solution. The attempt to solve the difficulties will be dangerous both to landlords and tenants alike. Great expense and sacrifice of time will be required before they could be made ready.

Babu Kulada Kinkur Roy:—I do not think it at all necessary to change judicial for executive authority for determining the rates of rent. On the other hand I am not prepared to object to this function being confined to the executive officers. I do not approve of the principles on which tables of rates are directed to be prepared. The procedure suggested will not at all remove the practical difficulties in the way of enhancement of rent.

Babu Durga Churn Bose, Mymensing:—The preparation of tables of rates would be very expensive and they would be ultimately of little practical value.

Mahomed Ali Khan, Zemindar, Attea, Mymensing:—The judicial authorities will give more satisfaction and decide the questions as to rates of rent with greater accuracy than Revenue officers.

The principles on which tables of rates are directed to be prepared are neither just nor reasonable and the procedure suggested will not remove the practical difficulties in the way of enhancement of rent.

Mr. R. Harvey, Manager, Paikparah Estate:—I see no objection to rates of rent being determined by a Revenue officer, but apparently his services (Section 62) will be available when applied for "some local area." In the case of a small Zemindar wishing to enhance the rents of a few ryots, how is he to obtain the services of such an officer? Is he to pay the costs of the enquiry? If he is to do this and then have to go to the civil court for a suit of enhancement of rent, certainly the expence will be quite prohibitory.

There seems no great objection to the principle on which tables of rent are to be prepared, but it is to be feared that the double agency of Revenue and Civil Courts will place further difficulties in the way of enhancement instead of simplifying matters.

PAYMENT IN KIND RESTRICTED TO HALF THE PRODUCE.

Babu Gopal Chunder Acharji Chowdry of Mooktagacha:—This will reduce existing rents a little.

Babu Sreenath Roy of Dacca:—Rent is rarely paid in kind in Dacca.

Nawab Ashan Ullah of Dacca:—The rule will reduce existing rents in some places.

Maharaja Sheoprosad Sing of Gidhour:—It would reduce existing rents in Behar.

Babu Bejoy Kissen Mookerjee of Utterpara:—In some cases landholders get more than half the produce.

Babu Jadub Kishore Acharji Chowdry of Muktagacha—It would operate to reduce existing rents.

Mr. M. B. Morrison of Bhagulpur:—In Patna the rule would reduce existing rents.

Babu Mohima Runjun Roy Chowdry of Kakina:—This restriction may in some cases reduce existing rents.

Babu Kally Prossuno Gogendro Mohapatro of Shabra:—This would reduce the existing rents in some places.

Babu Radha Bullub Chowdry, of Sherepur, Mymensing:—In portions of his zemindary and in other places this rule would reduce the existing rents.

Babu Pran Sankur Roy Chowdry, Dacca:—It would not reduce rent.

Mr. W. M. Eddis, Purneah Manager, cries, ditto.

Babu Kristo Chunder Chowdry, Mymensing:—ditto.

Babu Satis Chunder Chowdry, Mymensing:—ditto.

Babu Shyama Sankar Chowdry, Furreedpur:—ditto.

Bhagulpur Association:—Half the produe will do in many places. The proper course would be to leave the parties to adjust the proportion by mutual agreement or according to the existing custom where such customs prevail. The provision regarding the non-staple crops strikes at the root of the Bhaoli system.

Babu Surja Narayn Sing of Bhagulpur:—If Bhauli be commuted into money rent at the instance of ryot why should the landlord lose the benefit of an increase in the value of produce or of an increased share in the gross produce itself? The Bill allows an occupancy ryot to commute *Bhauli* for money rent against the will of the landlord and I apprehend this privilege will belong to ryots of the class who are converted into tenure-holders. Before such commutation the Zemindar used to have the benefit of increase in value and production, but if the commutation is made he would lose them.

Raja Purna Chunder Singh :—The provisions of section 81 will not in any way affect present rent.

Babu Kulada Kinkur Roy :—Section 81 will not operate to reduce existing rents.

Babu Durga Churn Bose :—It would not reduce existing rents.

Mr. R. Harvey, Manager, Paikpara Estate :—Has got no experience of rents paid in kind, but seems to think that one-half of the produce to be the usual arrangement and a fair one too.

Mahomed Ali Khan, Zemindar Attea, Mymensing :—In some cases this rule will reduce the existing rent.

INSTALMENTS OF RENT.

Babu Sreenath Roy of Dacca :—The instalments should not be less than four, and every such instalment should be fixed one month before the date of instalment for Government Revenue. The larger the number of instalments the easier it is for ryot to pay.

Babu Radha Bullub Sing of Koochiacole :—These provisions as to instalments would not reduce litigation.

Maharaja Sheoprosad Sing of Gidhour :—Instead of checking litigation these provisions would add to the inconvenience of parties.

Babu Bejoy Kissen Mookerjee of Utterpara :—These rules would put the last straw on the camel's back, monthly *kists* are the rule. Large sums have been spent in leases to that effect. They are a relief to the ryot. Highly paid agents must be employed and large securities taken in view of the largeness of the quarterly collection.

Babu Gobind Chunder Roy of Narail :—These provisions would not reduce litigation. They would work hard upon the ryots. They would find it difficult to pay a quarter's rent in a lump sum instead of paying by small monthly *kists* as at present.

Babu Komul Kishore Dutt of Mymensing :—The rules as to

instalments of rent would simply increase litigation instead of reducing it.

Babu Hem Chunder Chowdry of Ambaria:—The rules would neither check litigation nor simplify the decision of suits.

Babu Kally Kumar Roy Chowdry of Barripur:—This is no improvement upon the present law.

Raja Kistendro Nath Roy of Bolihar:—The number of kists should be so regulated that landholders may feel no difficulty in paying the Government revenue: but these rules would cause landholders much loss and inconvenience.

Babu Radha Bullub Chowdry of Sherepur Mymensing:—This rule would increase the confusion created by the courts.

Babu Pran Sankur Roy of Dacca:—The rule as to instalments of rent will be no adequate check to litigation and will not simplify the decisions of rent-suits. Few suits are instituted for arrears due for a single *kist*.

Babu Shyama Sankur Mojumdar of Fureedpur:—The provisions of Section 97 will not put any check on litigation or simplify the decision of rent suits. Proviso would operate to the prejudice of the landlord in respect of interest and punctual payment of rent.

Raja Promotho Bhusan Dev Roy of Jessore:—The number of instalments prevalent in each pergunnah from time immemorial has direct reference to the reaping times of the year. During ten months of the year, the ryot reaps his harvest. There are some parts of the district where winter crops are scantily grown but then they have varieties of rice crop to do with for at least seven months of the year. Instalments have accordingly been fixed by tacit mutual agreement from time out of memory. And they instead of being a source of harassment to the ryot, are a source of relief to him as he has got to pay a certain portion of the yearly rent whenever he gets the yield of his fields. Improvident as the ryots generally are, most of them would find it extremely dificult to make payment when a heavy *kist* came in, out of their savings.

The abridgment of *kists* into four would, it is apprehended, be a source of their ruin. The Zemindar's ruin will also be inevitable if he be not allowed to realise his rent at harvest times.

Raja Purna Chunder Sing of Paikpara :—Instalments if fixed by law would simplify the decision of rent-suits in many cases where there is no custom or contract, but the section leaves every thing in the hands of the Board of Revenue. I would much rather wish that in cases where there is no contract or custom the instalments should at once be fixed in the body of the law itself.

Babu Kulada Kinkur Roy :—I do not think the rule as to instalment would check litigation on the point and simplify the decision of rent-suits.

Mahomed Ali Khan, Zemindar Attea, Mymensing :—The rule provided in Section 97 will not check litigation nor will the rule simplify the decision of rent-suits.

Mr. R. Harvey, Manager, Paikpara Estate :—The rule as to instalments would not simply suits. Interference with the instalments is liable to serious objections. No Zemindar sues a ryot for *pleasure* but for sheer necessity and obstinate refusal to pay; it is an advantage to be able to sue in the case of confirmed recusancy as soon as a monthly *kist* becomes due and before a large balance accrues, otherwise delay of several months will decrease the chances of collection. With some tenants prompt action is needful as they make it a practice of *never* paying unless when sued, considering that the Zemindar is bound to pay quarterly, to the day, under pain of forfeiture of property, it is but equitable that his right to recover rent by monthly *kists* as is the custom of the country, should not be curtailed.

DISTRAINT.

Babu Gopal Chunder Acharji Chowdry of Mooktagacha :—The provisions are very detrimental to the interests of landholders.

Babu Sreenath Roy of Dacca :—The change proposed will

unnecessarily burden the ryot with costs, while it would enable him to remove his crops and cheat the Zemindar before assistance is obtained from court.

Maharaja Sheoprosad Sing of Gidhour:—These provisions would defeat the very object of distraint. Instead of a simple procedure they cause expense and delay, introduce much increase of litigation and saddle parties with costs.

Babu Bejoy Kissen Mookerjee of Utterpara:—These provisions are objectionable.

Babu Jadub Kishore Acharji Chowdry of Mooktagacha:—These provisions would enable the ryots to remove the crops before they are attached. The institution of distraint would be gone.

Babu Gobindo Chunder Roy of Narail:—These provisions are very defective.

Babu Komul Kishore Dutt of Mymensing:—The provisions would remove the present facilities in the way of recovery of rent and prove very injurious to landholders.

Babu Hem Chunder Chowdry of Ambaria:—These provisions would not serve the purposes of distraint.

Babu Kally Kumar Roy Chowdry of Barripur:—The legislature would have done well if they had omitted the subject altogether instead of proposing a procedure which is not only costly but injurious both to the Zemindar and ryots alike.

Babu Mohima Runjun Roy Chowdry of Kakina:—The present law for distraint is more convenient.

Babu Janoki Bullub Sen of Mahegunge, Rungpur:—This is a cumbrous and expensive procedure. A simple procedure is desireable

Raja Kistendro Nath Roy of Bolihar:—These provisions would virtually abolish the process of distraint.

Babu Radha Bullub Chowdry of Sherpur, Mymensing:—The provision regarding distraint would make the collection of rent still more difficult and dilatory. Both landholders and ryots would suffer by them.

Babu Raj Kumar Dutt of Noakholly:—The present law regarding distraint should be retained.

Babu Pran Sankur Roy of Dacca:—The provision for distraint will not expedite the realisation of arrears of rent. Sometimes the value of the distrained proceeds of a plot of land would not cover the costs of the application and the fees of the distraining officer, far less leave a margin for the Zemindar's dues. The penal clause in section 186 will mostly be taken advantage of by the defaulting ryots and in many cases the Zemindar will have to suffer for the shortcomings of his servants if he fail to prove satisfactorily his want of privity and although he had taken sufficient precautions to arrest the commission of any wrong. The claim for compensation will encourage litigation. No crop can be distrained for arrears of rent of the previous agricultural year. The arrears of a whole year cannot be realised by distraint only; for no crop can be found standing at the end of the year sufficient to cover the whole rent. If therefore the ryot persists in withholding payment of rent, the landlord cannot avoid the enforcement of his claims by a regular suit.

Mr. W. M. Eddis:—Section 186 seems to me too stringent and liable to abuse. Special facilities should be given to realise rent by distraint from the crops of pykasht ryots.

Babu Kristo Chunder Sandel Chowdry, Mymensing:—The law of distraint did never work hard upon the ryots in Mymensing The process has been unnecessarily made much more expensive and tedious. The law proposed would be found quite impracticable in practice, firstly, because, it will be beyond the power of many to pay the large amount of expenses necessary for distraining the crops of any number of ryots and secondly because the dilatory preliminary procedure will generally fall short of the purpose for which distraint is intended. Some provision should be made for allowing a co-sharer whose collection is separate independently to distrain the crop of an *ijmali* ryot.

Babu Shyama Sankur Mojumdar, Fureedpur:—The provisions

regarding distraint contained in section 166 and the following sections have made the process of distraint almost similar to ordinary rent suits in many respects, and have almost taken away the summary and expeditious nature thereof as provided in the distraint law now in force.

Bhagulpur Association :—The purposes of distraint would not be served by the provisions relating to distraint contained in the Bill. The result would be the discontinuance of the practice of distraint seeing that the delay caused in the issue of the process of distraint would defeat its object and no Zemindar would like to go to jail under the provisions of section 186 for anything illegal done under section 185 by any of his moffusil agents. It would be more honest to abolish distraint altogether under such circumstances.

Babu Surja Narayan Sing, Bhagulpur :—The existing law of distraint is a means of speedy realisation of rent in certain cases. The proposed provisions would cause much delay in recovering rent by distraint and in many cases the remedy will prove abortive as the crops will be removed or otherwise disposed of by the time the distraint is made.

Raja Purna Chunder Sing, Paikpara :—The right of private distraint is taken away by the Bill. The landlord will have to go to civil courts to distrain crops under the new law. This would be putting things in a worse position with respect to the Zemindar than before. The hands of the zemindar should be strengthened in the matter of distraint.

Babu Kulada Kinkur Roy :—The provisions of section 166 would not replace the distraint law in force.

Babu Durga Churn Bose, Mymensing :—The proposed measure would only take away a speedy and an inexpensive means for the collection of rent.

Mr. R. Harvey, Manager, Paikpara Estate :—The provisions of distraint contained in section 166 are a modified form of the

present law. They would be more cumbrous and lead to greater expense than before, but would not be of much practical good.

APPEAL.

Babu Gopal Chunder Acharji Chowdry of Muktagacha:- There should be appeals in all cases.

Babu Sreenath Roy of Dacca:—In a large majority of suits the value is below Rs. 50. There would be great injustice if appeals are not allowed in such cases.

Babu Radha Bullub Sing of Koochiacole:—There should be an appeal in such cases.

Nawab Ashanulla of Dacca:—There should be an appeal in all cases.

Maharaja Sheoprosad Sing of Gidhour:—There should be at least one appeal in such cases.

Babu Charu Chunder Mullik of Calcutta:—An appeal should be allowed in all defended cases.

Babu Gobind Chunder Roy of Narail:—This provision would be injurious alike to Zemindars and ryots.

Mr. M. B. Morrison of Bhagulpur:—The right of appeal should not be dropped in such cases. Small claims sometimes represent heavy interests.

Babu Komul Kishore Dutt of Mymensing:—A restriction to the right of appeal in such cases would prove very injurious.

Babu Hem Chunder Chowdry of Ambaria:—The proposed restriction would cause great injustice to landholders.

Babu Kally Kumar Roy Chowdry of Barripur:—The restriction would become a source of oppression to landholders.

Babu Mohima Runjun Roy Chowdry of Kakina:—The proposed change is not desirable.

Babu Janoki Bullub Sen, Mahegunge, Rungpur:—This would make the courts irresponsible. A provision for appeals always exercises a wholesome check on the courts of first instance.

Raja Kistendro Nath Roy of Bolihar :—There should be some provision for appeal ; otherwise there would be great injustice.

Babu Radha Bullub Chowdry, Sherpur Mymensing :—Great injustice would be done if no appeal is allowed in such cases.

Babu Pran Sankar Roy Chowdry Dacca :—Under the circumstances mentioned in Sec. 198 it is not desirable that the decision of the first court should be final. In order to check miscarriage of justice, one appeal to a superior Court should as a rule, be allowed.

Babu Kristo Chunder Sandel Chowdry, Mymensing :—There should be an appeal, but provision should be made for speedy determination of original suits and their appeals.

Babu Satis Chunder Chowdry, Mymensing :—An appeal should be allowed in every case.

Babu Shyama Sankur Mojumdar of Furcedpur :—One appeal ought to be allowed in all rent suits. It is a great safeguard against hasty and careless determination of suits and ought not to be taken away in any case whatsoever. Second appeal to the High Court may be disallowed in cases below Rs. 100 in value except in cases where questions of title &c., are to be determined, and special officers appointed by Government may finally decide appeals below 50.

Bhugulpur Association :—It is not desirable to take away the right of appeal as proposed by Sec. 198. The Munsiffs generally hold views unfavourable to landlords in suits between them and their tenants and the right of appeal is the only remedy open to them for obtaining redress in such cases. If the right of appeal be taken away, landlords would be great losers. There would be no harm done by appeal, if it be made a condition that the rent should be deposited before preferring an appeal.

Raja Purna Chunder Sing, Paikpara :—I do not think it proper to deprive parties of the right of appeal in suits for amount below Rs. 50.

Babu Kulada Kinkur Roy:—There ought to be one appeal at least.

Babu Durga Churn Bose, Mymensing:—The rights of appeal should not be taken away.

Mahomed Ali Khan, Zemindâr, Attea, Mymensing:—It is not at all desirable that there should be no appeals in rent suits valued at less than Rs. 50. They very often involve questions of the utmost importance to the parties and that the finality in such cases should rest with Munsiffs is undesirable.

Mr. R. Harvey, Manager, Paikpara Estate:—One appeal would at least be desirable.

ORDINARY RYOTS.

Babu Gopal Chunder Acharji Chowdry of Mooktagacha:—Altogether unwarrantable

Babu Sreenath Roy of Dacca:—It would be a dangerous innovation.

Babu Radha Bullub Sing of Koochiacole:—The landholder should on no account be made to pay compensation for improvements.

Nawab Ashanulla of Dacca:—The provisions of Chapter VIII., are extremely unjust. The ryots should not have any rights beyond those they get from their landlord and they should never be declared entitled to get compensation for disturbance or improvements

Maharaja Sheoprosad Sing of Gidhour:—These provisions would make all tenants-at-will occupancy ryots. The rule as to compensation is simply monstrous. It was quite unknown in this country.

Raja Shyama Sankur Roy of Teota:—Proceedings of a public meeting in which 200 landholders were present. The provisions relating to ordinary ryots and to compensation for disturbance and improvements are one sided and all in favour of ryots.

Babu Gobind Chunder Roy of Narail:—These provisions would give to ordinary ryots rights which they never possessed. As the

majority of landholders would be unable to pay compensation, these ryots would neither be liable to ejectment nor enhancement of rent. They would always keep their landlords at bay.

Mr. M. B. Morrison of Bhagulpur.—The ordinary ryot would be an occupancy ryot in disguise. The tenant-at-will would be a thing of the past.

Babu Kumul Kishore Dutt of Mymensing:—These provisions are very unreasonable. Ryots never make any improvements. The very enquiry into the extent of improvements would cause useless trouble and expence to parties.

Babu Hem Chunder Chowdry of Ambaria:—These provisions are very unjust. They would prevent landholders ousting any ryot.

Babu Raj Rajeswary Prosad Sinha of Surjapur, Shahabad:—Zemindars would greatly suffer by these provisions. Small landholders would be unable to pay the compensation.

Babu Kally Kumar Roy Chowdry of Barripur:—These provisions are as unjust as unfair. They make ejectment simply impossible.

Babu Mohima Runjun Roy Chowdry of Kakina:—The provisions for compensation are not just.

Babu Janoki Bullub Sen, Mahegunge, Rungpur:—These ryots would get a more profitable position than occupancy ryots. If the landlord has to pay compensation it would not be worth his while to eject them.

Raja Kistendro Nath Roy of Bolihar:—These provisions would make landholders lose at every step. They are therefore very objectionable.

Babu Radha Bullub Chowdry of Sherpur, Mymensing:—Such provisions were never before heard of and the most ambitious ryots never expected to enjoy such a right as to recieve compensation.

Babu Raj Kumar Dutt of Noakhally:—Ordinary ryots should not be allowed to make improvements without the consent of

their landlords. The provision regarding compensation is very objectionable.

Babu Issan Chunder Chowdry and Kally Mohun Mookerjee, Managers of Jogidia Estate, Noakholly.—These provisions would take away the proprietory rights of landholders. If such be the law they would gladly change places with ryots. Zemindars should have the right to eject an ordinary ryot without assigning any cause. Such a ryot should not be allowed to make any improvements.

Babu Pran Sankur Roy Chowdry, Dacca:—As regards ordinary ryots, the landlord will not be able to sue them for a just and fair enhancement of rent without running the risk of making himself liable for a compensation. In this respect they are better off than occupancy ryots. The provision for compensation for disturbance is anything but fair and reasonable. The object of this Section is to prevent rack-renting, but the provision contained in section 119 is enough for the purpose.

Mr. W. M. Eddis, Manager of Maharaja of Durbhanga, Purneah:—The claims for compensation assume a state of things that does not exist. The Bill assumes the ryots to be in a far more advanced position than they really are. What are the improvements made by a ryot on his holding beyond a little manuring and how often is this done except immediately round the homestead. The ryot takes away more from the land, than he restores to it by manure. Without doubt, *i. e.* by common law if a ryot relinquishes his holding, it reverts to the Zemindar. This is universally accepted by the ryots, to deny it is spoliation. As to the improvement of waste land, the ryot who first cultivates it, has consideration in low rates, in a sliding scale probably, and also in the exceptionally good crops from newly cleared or virgin soil. True, thousands of ryots annually relinquish their holdings, not from oppression of the zemindars, but from improvidence, or other causes and mainly to escape from the killing grip of the money-lender. These deserted holdings come into the hands of the Zemindar who is the

natural and rightful owner and reciever of a lapsed occupancy right and who at once settles other cultivating ryots upon them. The transfer and gift clauses of the Bill will throw these holdings into the hands of the money-lending class who will also work the compensation clauses to their gain—a class of tenure-holder, not cultivating ryots, will be created, who would till the land by hired labour and the ryots in this state of things will be serfs deliberately created by the Government itself, who coolly recognises that such will be the case and looks forward to cure by and bye by the uprooting of the class it has brought into life. Is this a sound principle of legislation?

Babu Kisto Chunder Sandel Chowdry, Mymensing:—There is no provision in the Bill for giving the Zemindar compensation if the ryot leave the land after doing any mischief or injury thereto. On the other hand if a tenant makes improvement in his holding even against the will of the Zemindar he is entitled to compensation. Strictly speaking no improvements are made or are required to be made by the ryots of this district. Compensation for disturbance presupposes want of right in the Zemindar to eject even a squatter who holds lands for a year on condition of giving it up after that period. In my opinion compensation should never be allowed. Compensation for improvement is also objectionable if it is not made with consent of the Zemindar.

Babu Satis Chunder Chowdry, Mymensing:—Ryots never make any improvements. The provisions as to compensation are altogether arbitrary and unjust.

Babu Shyama Sankur Mojumdar, Fureedpur:—We wholly dissent from the provisions of Chapter VIII regarding ordinary ryots. They are tenants-at-will liable to be ejected on mere service of notice of ejectment, and subject to enhancement at the mere will and pleasure of the landlord who had by his will and pleasure first brought him into existence, until they acquire a right of occupancy under the law they cannot in justice ask for more rights. What compensation can a tenant, holding land, say

for one year equitably claim for being legally ejected and so forth much less to the extent of the exorbitant amount of so many times the amount of rent? What improvement does he make or is capable of making? Even if he does so, he does so at his own risk, with his eyes wide open, and cannot in justice claim any compensation for the same.

Bhagulpur Association:—The Provisions of Chapter VIII. would lead to much litigation. The result would be that the ordinary ryot would stay for ever. If the tenant do not agree to pay the rent demanded by the Zemindar or if the Zemindar does not like to evict him for fear of compensation for improvements and disturbance, why should not rules be laid down for enhancement of rent through the court. In the absence of such rules, the Zemindar would be forced to eject him under Section 93 by paying heavy compensation to the tenant if he would not amicably agree to pay the enhanced rent although a moderate increase would have satisfied the Zemindar and enabled the ryot to hold on. So the landlord will be forced to resort to litigation. The present law does not work injuriously to any body. Compensation for improvement in the present circumstances of the tenantry is not wanted and compensation for disturbance is opposed to all customary law and the notions of the people. The pyekasht and khoodkhast ryots who had no rights of occupancy never claimed compensation. Analogies from foreign countries should not be introduced. The amount of compensation for disturbance is exorbitant.

Babu Surja Narain Sing, Bhagulpur:—If it be the intention of the legislature to confer occupancy right on all ryots it ought to give it expressly. The rules contained in Chapter VIII taken with those in other parts of the Bill virtually place it beyond the power of the landlord to eject an ordinary ryot and curiously enough no rules are laid down empowering the landlord to enhance the rent of the ryot through the court. The law regarding the non-occupancy ryot ought to remain as it is now. The proposed limit of rent is too low.

Raja Promotho Bhusan Dev Roy, Jessore:—With regard to settlement of rent between the Zemindar and the ordinary ryot the legislature should leave the landlord quite unhampered by any rule or law. Restrictions as contained in Section 119 with reference to the rent of this class of ryots, would be productive of infinite mischief to both landlord and tenant. The permanent settlement surrendered to the Zemindar the right to profit by future increase of cultivation and the cultivation of more valuable articles of produce, but the Bill handicaps him in the exercise of that right. Section 93 binds the Zemindar to pay the ryot in case of ejectment, a compensation for disturbance equal to 10 times the annual increase demanded. This implies that the landlord will have to purchase by payment of full consideration the benefit which he has the right to get. It is not clear why this compensation should be given him. If he loses a holding here by withholding payment of rent he is sure to get a holding there. When the ryot is entitled to compensation for disturbance why should not the landlord be entitled to similar compensation when a tenant relinquishes a holding without his consent and subjects him to loss of rent?

Raja Purna Chunder Sing, Paikpara:—By the provisions of the Bill even ryots who have not acquired any right of occupancy may not be ejected, except on the grounds detailed in the law and in those cases compensation for improvements as well as for disturbance shall have to be given to them. Here the Zemindar's rights have been seriously overridden.

Babu Kulada Kinkur Roy:—I think the provisions are unjust. A tenant-at-will cannot have these advantages. He ought to be treated as a person having no right in the land but such as has been granted to him by the Zemindar. He cannot claim any compensation for any improvement, which may have been accidently made by him. He is not in a position to make any permanent improvement, whatever improvements he makes he makes them with the knowledge that he has to reap the benefit

of them so long as his landlord chooses to keep him on the land.

Babu Durga Churn Bose:—These provisions are extremely unjust. These ryots have no rights whatever beyond what the Zemindar gives them. The rules as to compensation are arbitrary and unjust.

Mr. R. Harvey, Manager, Paikpara Estate:—Compensation for disturbance is entirely unknown in this country; and as proposed would appear inequitable. Chapter VIII deals with those tenants only who have no right of occupancy and are termed by the Bill "ordinary ryots." They are by no means to be tenants-at-will, as it is expressly provided by the Bill that they are not to be evicted for any other reason such as refusal to pay enhancement, or breach of contract &c. except for default of payment of rent; and they cannot contract out of these stipulations. If ejected they can claim compensation for "improvements" made, if any, by them, and also (in case of non-agreement to enhanced rate) for "disturbance." This section clothes the ordinary ryots with a number of new rights and privileges which they never possessed before. Referring to this chapter the statement of objects and reasons states that the principle on which it is based is "while it is desirable to interfere as little as possible between tenants of this kind and their landlords" &c. yet certain protection is to be afforded them. But what greater amount of "interference" could any body possibly suggest than what has been adopted by the legislature in this instance for the protection of those who having no right of any kind is permitted by the landlord to occupy land. Even supposing it necessary in the case of occupancy ryots, why in the case of ordinary ryots are both parties debarred from freedom of contract? Why is the landlord debarred from leaving out a piece of land for 2 or 5 years, and terminating the lease if both parties wish it? This class of tenants do not make any inprovements and are certainly not in any way entitled to compensation for disturbance. The whole chapter would appear

to have been taken from the Irish rent-law without regard to the people or the circumstances to which it is to refer. Why should a landlord pay for exercising his undoubted right to eject a squatter?

Mahomed Ali Khan, Zemindar, Attea, Mymensing:—The provisions of Chapter VIII regarding ordinary ryots and compensation for improvement on land and also for disturbance are the most objectionable provisions in the whole Bill and utterly ruinous to the zemindars. Hitherto an ordinary ryot was liable to eviction at the pleasure of the landlord on sufficient notice being given to him, the Bill proposes to take the time honoured privilege away from the zemindars. Under the Bill a tenant could be ousted on his refusal to pay enhanced rate of rent; why should he then be entitled to compensation either for disturbance or for any improvement he might have made on the land? He ceases to hold the land of his own will, being unable to pay the Zemindar's just dues. The provisions hold out a premium to fraud, falsehood &c. The rate of compensation also is highly objectionable.

The ultimate results of these provisions would be to make every ryot whatever be his status or standing, hold his lands permanently at a fixed rent and to place the zemindars at the mercy of their tenants. This chapter takes away almost all proprietory rights from the Zemindar.

PROCEDURE FOR RECOVERY OF RENT.

Bábu Gopalchunder Acharji Chowdry of Mooktagacha:—There should be one and the same procedure for the recovery of rent in Government estates and in those of private individuals.

Babu Sreenath Roy of Dacca:—The present procedure is dilatory and inconvenient, some summary procedure should be given to the landholders. It would do well if the khas mehal procedure were extended to private estates.

Babu Radha Bullub Sing of Koochiacole:—The present pro-

cedure is dilatory and inconvenient. The Government procedure should be given to all landholders.

Newab Ashanulla of Dacca:—The present procedure is dilatory. The tenant must be made to deposit rent in Court if he disputes the landholder's claim. The Government procedure should be adopted.

Maharaja Sheo Prosad Sing of Gidhour:—The Bill does not offer any facilities for recovery of rent. A speedy procedure such as that allowed to Government, should be given to landholders.

Babu Jadub Kishore Acharji Chowdry of Mooktagacha:—The present procedure is extremely dilatory.

Babu Jogendro Kishore Roy Chowdry of Ramgopalpore:—The present procedure is dilatory and inconvenient. The Government procedure should be extended to private proprietors.

Raja Shyama Sunker Roy Chowdry of Teota:—Proceedings of a public meeting at which 200 landholders were present. Without affording landholders any facility for the recovery and settlement of rent the Bill aims at a complete redistribution of property in land by depriving zemindars of several valuable rights.

Babu Gobind Chunder Roy of Narail:—The present procedure is very dilatory and inconvenient. It causes useless loss both to the Zemindar and the ryot.

Mr. M. B. Morrison of Bhagulpore:—There is no reason why there should be two sets of procedure.

Babu Komul Kishore Dutt of Mymensing:—Some provisions for easy and cheap recovery of rent are very necessary. The Government procedure would be very desirable.

Babu Hem Chunder Chowdry of Ambaria:—The present procedure is not adequate for the recovery of rent. The Government procedure should be made applicable to private landholders.

Babu Raj Rajeswary Prasad Sinha of Surjiapora, Shahabad:—Facilities should be given to landholders for the recovery of rent.

Babu Kally Kumar Roy Chowdry of Barripore:—The procedure

is sometimes dilatory and inconvenient. I think the procedure by which rents in Ward's estates are recovered should be given to all landlords.

Babu Mohima Runjun Roy Chowdry of Kakina:—Some summary procedure is desirable. The certificate procedure should be given to landholders.

Babu Kally Prosunno Gagendro Mohapatra of Shabra:—The present procedure is very inconvenient. The sun-set procedure would be very effectual in recovering rents by landholders from their ryots.

Raja Kistendro Nath Roy of Balihar:—A cheaper and more summary procedure is necessary.

Babu Radha Bullub Chowdry of Sherpore, Mymensing:—A summary procedure is necessary. There should be ejectment for non-payment of rent.

Babu Raj Kumar Dutt of Noakhally:—The present procedure is very dilatory. There should be a summary procedure.

Babu Pran Sunker Roy:—The present procedure for the recovery of rent is to a great extent dilatory and inconvenient. I have shewn that the provision for distraint is not sufficient for the purpose. Anything short of a regular procedure which allows parties to have their say and to adduce evidence if they like would in the long run increase litigation. A summary procedure in addition may be tried just in the line of Ch. XXXIX of C. P. C. on Negotiable Instruments. When a landlord desires to proceed under this provision he should be required to get his rent-roll registered previously. In order to give effect to this, provision should be made for voluntary registration of rent-rolls giving opportunity to every tenant to dispute any entry in the same. The landlord should file the registered rent-roll and the counterparts of receipts (if any) along with the plaint and the decree when made final may be executed as before.

Mr. W. M. Eddis, Manager, Purneah:—The simpler and more

summary the procedure the better, but the aim should be to do without the Courts.

Babu Kristo Chunder Sandel Chowdry of Mymensing:—The procedure laid down for the recovery of rent is quite inadequate and at the same time very costly. If this procedure be adhered to more than two years will be necessary to recover the rent of a single *kist*. In case the right of occupancy be made transferable by sale, the procedure in Reg. VIII of 1819 for the realisation of arrears of rent in Patni Taluqs should be adopted. Power of summary sale should be given to Munsiffs and such sales should take place four times a year at least 15 days before the fixed dates of payment of Government revenue. If a ryot can satisfactorily prove that no notice was served upon him, he should be allowed seven days time for payment of arrears of rent with costs and damages. If the holdings of ordinary and occupancy ryots be not made transferable Act VII of 1880 should be made applicable to them.

Babu Satis Chunder Chowdry:—A summary procedure should be allowed. The Putni procedure may be adopted.

Babu Shyama Sunker Mozoomdar of Furreedpore:—We consider the present procedure for the recovery of rent to be dilatory and inconvenient as well as highly expensive.

We want a summary procedure to enable us to realise rent punctually, considering the stringency of the sun-set law to which we ourselves are subject. We would suggest that the certificate system be extended to private estates also.

Bhagulpore Association:—The present procedure for recovery of rent is dilatory and inconvenient and ought to be simplified. The rules regarding grant of receipts and submission of annual accounts as contained in the Bill will be found impracticable in many cases. In many cases the annual rent is not ascertained until about the close of the year, after a measurement of the holdings. In some parts of the country rent varies with the crop. It would be impossible in such cases to state the annual

rent in every receipt when the amount of rent is not known. Then there are small proprietors *viz.*, Brahmutterdars, Lakhirajdars &c., who would find it extremely difficult to procure printed cheque-receipts and literally to observe the provisions laid down in the Bill. These provisions will practically remain a dead letter; and the landholders shall hereafter be held up to as execrable persons for defying the provisions of the law of the land as is now being done in the case of abwabs. But those who argue thus, ought to know that if any legislation be opposed to the genius of the people and their inveterate habits it can hardly be respected and acted up to. A similar mistake was committed in the enactments declaring all *abwabs* illegal and it would be a reiteration of the same error of judgment if the rules relating to receipts obtain the force of law. The law on this point ought to be permissive and some advantages should be held out to those who grant receipts as laid down in the Bill. The landlord's rent-suit ought to be decreed immediately after filing it, on production of registered kabuliat and check-receipts and their genuineness established. But in that case the decree would be an *exparte* one. To obviate the difficulty be it enacted that the landlord should at least a week before bringing the suit serve a copy of the plaint on the tenant through his own man who should if possible take a receipt from him, and be examined on oath in Court as to the service of the plaint; this decree granted should be immediately executed and if the defendant should appear and apply for a revival of the proceedings, it must be made incumbent on him that he should deposit the decretal amount in Court before any such orders could be passed.

In cases where there would be no kabuliats and check-receipts, the landlord should serve a notice of claim (demand) at least a fortnight before the institution of his suit, and the law should lay down that if the tenant does not serve the landlord with an objection statement disputing the claim within the period, the landlord's suit should be decreed on proof of his statements

as also of the absence of counter notice. If eventually on the appearance of the tenant to contest the decree it be found that the notice was concealed, the plaintiff should be criminally prosecuted. If a counter-notice be filed, the Judge should adjudicate on the merits of the case after holding a regular trial. N. B.—This class of cases may be open to objection but the former ones should not.

Babu Surja Narain Sing, Bhagulpur :—The rules laid down in Chapter XIV do not afford any facilities for the recovery of rent.

Raja Promotho Bhusan Deb Roy, Jessore :—Government ought to give the zemindars the same facilities to recover rent from their tenants as they (the Government) have in recovering their revenue from the Zemindar.

Raja Purna Chunder Sing :—The present procedure for the recovery of rent is dilatory and inconvenient. I would suggest that ryots should deposit in court the value of the suit before they be allowed to defend a rent-suit. This would lessen the number of vexatious objections in rent-suits.

Babu Kulada Kinkur Roy :—The present procedure for recovery of rent is no doubt dilatory and inconvenient. I would ask for a summary procedure.

Babu Durga Churn Bose, Mymensing :—The present procedure is quite inadequate for the speedy realisation of rent. There should be a speedy procedure.

Babu Goluk Chunder Chakravarti of Mymensing :—It is the interest of the Zemindar to hold amicable relations with his ryots, The riot at Pubna was an incident in the chapter of accidents. such riots however are not common in Bengal. Government is overjealous in protecting its own interest as the sun-set law for the realisation of its revenue shows, why should it not extend to zemindars similar privileges and facilities in the collection of their dues from their ryots. The Government should not override the customs which have existed from time immemorial. The Govern-

ment should not throw obstacles in the way of landlords and tenants in making contracts.

Mr. R. Harvey, Manager, Paikpara Estate :—The present procedure for recovery of rent is most dilatory, unsatisfactory and inconvenient. Every recusant ryot knows very well that a regular suit must take place and months must elapse before any thing could be realized from him. The present state of things is absolutely in favour of a troublesome ryot. From a month to 1½ months is required to obtain a decree and 4 or 5 months more to execute it and bring property to sale, by which time a further heavy arrear has accrued. Some summary mode of procedure (as the issue of certificates in force in Government khas mehals) should be adopted, providing a heavy penalty in case of false claim. Power should be given to at once attach all property, moveable or otherwise, instead of as at present.

Mahomed Ali Khan, Zemindar, Attea, Mymensing :—The present procedure for recovery of rent is dilatory and inconvenient. In a rent suit the tenant should be required to deposit the rent claimed before putting in his written statement, so that as soon as the landlord obtains a decree, he may at once draw the decretal amount from the court without having recourse to the execution proceedings. The rules regarding sales in execution of rent decrees ought to be simpler. The landlord ought in the first instance to have the liberty to proceed against any property possessed by the defaulting tenant for the realisation of his dues.

THE PRINCIPLES

OF THE

BENGAL TENANCY BILL

LEGALLY EXAMINED.

BY

NUFFER CHUNDRA BHATTA

1ST SUB-JUDGE, 24-PERGUNNAHS.

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PREFACE.

It is from deep conviction and not inorder to support a preconceived notion that I have put my thoughts and arguments in writing in the following pages. Long before the Rent controversy in its present form arose I had to examine the question of the proprietory right of the zemindars in connection with a stoutly contested ejectment suit. Since then I have read the voluminous critical minutes and proceedings of the Rent-commission, Mr and now the Hon'ble C. D. Field's admirable Digest and almost all the Newspaper controversies, and lately the speeches of the Hon'ble Members of the Legislative Council on the Bill. But nothing has shaken my convictions as to the rights of the Proprietors of Land, confirmed or conferred by the Permanent Settlement, though one may possibly be led to entertain some doubts as to the soundness of the policy that led the Legislature of 1793 to confer such rights, powers, and privileges on the landholders, without securing or granting some such rights to the ryots as are now contemplated to invest them with. But it is now too late, as it seems to me, to find a power in the Regulations themselves, to remedy the short-comings of 1793. The only way to get out of the difficulty for the Government, is to act again in the character of an Absolute Sovereign, to resume a portion of the proprietory right after making due compensation to landlords, and then to redistribute the same amongst the cultivators of the land.

I have tried to put the arguments, many of which are not in themselves new, in a methodical way, and to treat the whole subject systematically as in a judgment, so far as I could find time to do so. I have not been

able to exhaustively deal with so vast a subject, because the time allowed for the purpose was short, and my judicial duties left me scanty leisure. I have first discussed the different views that have been taken of the Permanent Settlement, and then enumerated the rights and privileges of the Proprietors enjoyed before that settlement and confirmed or conferred on them and the position of the ryots assigned by the Permanent Settlement, so far as they can be gathered from the Regulations themselves, according to which alone the outside public shaped their conduct. I have shown that it is not proper to go outside the Regulations for their interpretations. From thence I have shown that either the ryots, except a few, had no tangible rights in land at all or that they were divested of any rights they might have had, for the benefit of the Proprietors, inorder to induce them to accept the then exhorbitant terms of the Settlement. I have then shown that the Legislature reserved no such power, as is contended for, in the Settlement Document itself, to deprive the Landlords of a portion of their proprietory right and then to confer it on the ryots and then set forth that the Bill in some of its provisions tries to do that and nothing less. I have not, however, been able to suggest any new or more summary Procedure for Rent-suits.

I now earnestly request any reader that kindly takes up or chances to read this pamphlet to have the Regulations and Acts referred to here before him, before he goes through this paper or otherwise the full force of the arguments may, I fear, be lost upon him.

ERRATA.

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THE PRINCIPLES OF THE BENGAL TENANCY BILL.

As THE propriety, suitability, and I may say, the validity of many of the provisions of the Bill depend upon the view we take of the rights of the proprietors, confirmed or conferred, and the position of the ryots assigned, by the Permanent Settlement and the nature of that Settlement itself, I will consider briefly what views have been taken of it and state my own before I go into other matters.

Notwithstanding the solemn declarations in Reg. I. of 1793, the extreme advocates of the tenant's rights urge that it is nevertheless a pure legislative enactment, which a succeeding Legislature may modify or even set aside, if necessary, and that it should do so as the Permanent Settlement was a huge blunder entailing loss upon Government and injuries upon the ryots. This view however was not adopted in the introductory speech, and so I need not stop to consider it.

Some of the advocates of the zemindar's rights, on the other hand, contend that the settlement was a solemn contract or compact between the Government and the proprietors of land and is inviolable without the consent of both parties. This is the view which the Hon'ble Mover of the Bill accepts. But then he argues to show that it is no obstacle in the way of fresh legislation in modification of the supposed rights of the zemindars. He says, "the parties to the contract were the Government on the one hand and the zemindars on the other. The ryots were not consulted about the arrangement and were in no sense a party to it and according to the most ordinary principles of contract it could

not affect any right which they then had or might hereafter acquire." But even in this view, as it appears to me, if in fact rights of third parties, such as the ryots, were encroached upon by the strongest of the two parties to the contract and made over to the other, it would not lie in the mouth of that party subsequently to say that it had no right to so make over those rights—it is in fact *estopped* from urging such a plea, though that third party might assert their rights before an independent tribunal, if those rights were not barred by the lapse of a century, and if there were such an independent tribunal in the country. One of the contracting parties at least cannot undo its own acts without making ample compensation to the other.

I will endeavour to show that rights of third parties were consciously or unconsciously encroached upon by the Government not merely as an ordinary contracting party, but as the Absolute and Despotic Sovereign and made over to the "actual proprietors of land." In that character it may again resume the whole "property" or re-distribute it. But the Government is not going to act in that character in this matter. It simply denies certain assumed or real rights of the proprietors and holds that the ryots too had certain rights which the proprietors subsequently encroached upon themselves and then proposes to restore both parties to their respective original positions held at the time of the Permanent Settlement, under a power said to have been reserved under the terms of the Permanent Settlement itself. Hence it is to be seen whether the Government or the proprietors are right in their respective contentions. Here I may as well state my own view of the Permanent Settlement. That settlement was neither a simple ordinary contract, nor a simple ordinary enactment based upon mere expediency, but a solemn Royal Warrant of an absolute Sovereign *confirming* or modifying, or taking the worst view of it from the zemindar's stand-point, *conferring* property for considerations pecuniary, political and economical, and past, present and future, and as such cannot be altered or modified without due com-

pensation being made as when land is acquired for public purposes under the Land Acquisition Act. Those considerations were;

(1) to assess the largest possible amount of revenue (ten elevenths),

(2) to levy the same for ever without remission on account of drought, inundation, &c., to which the country was so frequently subject,

(3) to deprive the proprietors of the seigniorial powers and to introduce the reign of law and efficient administration,

(4) to clear the country of the howling jungle,

(5) to increase the food-supply of the country,

(6) to create a body of hereditary landed aristocracy as staunch supporters of Government.

(7) to furnish a subject for investment of capital,

(8) to secure the recovery of the revenue by sale of the Estates and

(9) to compensate the proprietors for the seigniorial powers of which they were so deprived.

Being too strong for the people to resist it, the Government of the day had indisputably the actual power to despoil, if necessary, any man or body of men of his or their rights, and privileges without consulting any body affected by its acts. The only question is, whether it did actually act that way. In order to shew that, (and indeed throughout this discourse) I will confine myself within the four corners of the Regulations themselves and would not look into anything said or written by any authority, however high, either before or after the settlement, unless it has the force of judicial interpretation. Those sayings and writings were not open to the outside public and were not legally published, publicity being essential to make a law binding. (*Vide* sections 1 and 9, Reg. XLI. of 1793). It was the Regulations alone that were given out to the world as containing the whole law and the final deliberate intentions of the Legislature and were translated into the native languages (sec. 18, Reg. XLI. of 1793). One of the objects of the

codification of the Regulations is thus expressed in sec. I. of the said Regulation:—"A code of Regulations framed upon the above principles will enable individuals to render themselves *acquainted with the laws* upon which the security of the many inestimable privileges and immunities granted to them by the British Government depends and the mode of obtaining speedy redress against every infringement of them." It was on the faith of those Regulations only that people bought and sold, gave and took, made permanent provisions for families and institutions and endowments for sacred and charitable purposes. It was on the faith of those Regulations alone that people laid out their hard-earned money in taking permanent leases and spent capital to make improvements, as by preamble to Reg. II. of 1793 land was made "most desirable of all property." I will take the whole of the early Regulations to see what were the intentions of the Legislature in this mater for the earlier a Regulation is, the more likely it is to be in conformity with those intentions, as the Legislators of those days had better opportunities of knowing and ascertaining those intentions than those of a later period, Lord Cornwallis himself having passed the Regulations of 1793 to 1797. The Regulations 1 to 48 passed on the same day, namely, 1st May 1793, are of paramount interest as explaining, completing and supplementing each other. In construing them I will follow the golden rule laid down in one of those very Regulations, viz., Reg. XLI. of 1793 sec. 19 which enjoins that "one part of a Regulation is to be construed by another so that the whole may stand." If we find that the Regulations defined the rights of certain classes of people connected with land and did not define those of others we must take it that either the rights of those others now claimed for them did not exist at all or that the Government of the day thought it expedient to suppress and abolish them in order to induce the proprietors to accept so exorbitant an assessment as ten-elevenths of the produce and to submit to the deprivation of their seigniorial rights. It is useless citing Manu and Todur-Mull, Shore and

Harrington, for people simply refuse to believe that confusion and anarchy that followed the breaking up of the Mogul empire and the rise of the Marhatta and the British Powers any body had practically any rights or had the means of asserting them. They enjoyed such benefits as the Government for the time being was pleased to allow them. When the rights of the big princely houses were not respected is it likely that those of poor peasants were left intact? Neither the Government nor the proprietors would now be satisfied with one-twelvth share of the produce enjoined by Manu, but I ask why one-third share of Akbar should not be allowed to the Zemindars at the present day? The annual and quinquennial settlements which preceded the Permanent Settlement bespeak of enhancement of revenue by Government (Sec. 7 Reg I of 1793) and that again bespeaks of the license given to the land-holders to recoup themselves at the expense of the ryots.

Now it is said that "the ryots were not consulted about the arrangement and were in no sense a party to it." But were the so-called "other party" *viz.*, the zemindars, independent talukdars, and other actual proprietors of the soil" consulted about it? On the contrary, had not many of them actually refused "to pay the assessment required of them," and in consequence their estates had to be held khas or let in farm, as Sec. 5 Regulation I of 1793 chronicles? Those who finally declined to accept the assessment were paid malikana under sec. 44, Reg. VIII. of 1793, Some of them were "disqualified proprietors" such as minors, lunatics, females, as set forth in clause 5, sec. 8, Reg. I., and yet their estates were permanently settled. Lakhirajdars and Mokurruridars were either dispossessed or their lands assessed either by the Government or by the zamindars under clause 3, sec. 8, Reg. I. and sec. 16, Reg. VIII. and Reg. XIX. and sec. 18, Reg. XXXVII. of 1793, and chakran lands were similarly resumed (sec. 41, Reg. VIII. of 1793). Again sec. 60, Reg. VIII. restricted the powers of *all* proprietors of land including Lakhirajdars to cancel

certain leases. Were these Lakhirajdars and Mokurruridars consulted in that arrangement and their consent taken ?

The assessment was made at ten-elevenths share of the produce. It is a matter of history that, in consequence, the majority of the settlement zamindars were sold out in the course of a few years (*vide* preamble to Reg. VII. of 1799). Is it then possible that they would have accepted such ruinous terms if they were consulted in the arrangement and their consent taken ? Where was the necessity for so much puffing up, as it were, of the benefits of a Permanent Settlement in sec. 7, Reg. I. if its advantages were so apparent ? The truth is the settlement was the measure of an absolute Government forced upon the zamindars *nolens volens*. A large number of them accepted the settlement, for what else could they do ? The people of this country have a superstitious love for land and that was the main motive for acceptance.

I have already indicated that the rights and privileges of third parties, such as Lakhirajdars, Mokurruridars, &c., were expressly modified by the Settlement Regulations. In further corroboration of this position I may refer to sections 48, 49, 50, 52, 53, 55, 56, and 60, Reg. VIII. of 1793. Here it may be noted, that the words "other actual proprietors of the soil" included Lakhirajdars and dependent talookdars while the settlement addressed to "all zemindars independent talookdars and other actual proprietors of land *paying revenue to Government vide*," sections 3 and 4, Reg. I. of 1793. By sec. 55, Reg. VIII. of 1793 all "actual proprietors of land or dependent talookdars or farmers of land of whatever description" including Lakhirajdars also, were prohibited to "impose any new abwab or mhatoot."

As for the then existing ryots Sec, 54, Reg. VIII. of 1793 expressly legalised the existing abwabs. Sec. 2, Reg. XLIV. restricted the terms of pattahs to ten years and above all sec. 5 authorised the cancellation of all leases and engagements after sale of an estate for arrears of revenue. Sections 29 to 33, Reg. XI. of 1792 which explained the previous laws and practice and did not profess

to lay down a new law as will be hereafter shewn, prove how seriously the ryots were affected. How their rights and privileges, if any, were indirectly and impliedly affected will be shewn hereafter.

So far as it may be gathered from those Regulations it would appear that before that settlement they used (1) to levy sayer on Hats and Bazars and impose other internal duties (clause 2, sec. 8, Reg. I. and sec. 35, Reg. VIII. and preamble to Reg. XXVII. of 1793),

Now as to the nature of the interest the zemindars, etc., obtained under the Permanent Settlement.

(2) to keep up Police Establishments (clause 4, sec. 8, Reg. I. and Reg. XXII. of 1793),

(3) to receive malikana allowance from Government in case the land was held khas or let in farm on refusal of the proprietors to accept the then temporary settlements (sec. 5, Reg. I. and sec. 44, Reg. VIII. of 1793),

(4) to impose abwabs or mhatoots (sections 54 and 55, Reg. VIII.).

(5.) to hold certain private lands as nankar, khamar, nijjote in the cultivated area for the maintenance of themselves and their families (Sec. 39 Reg. VIII),

(6.) to pay the revenue which was periodically revised and therefore increased or decreased according to circumstances (Sec. 7 Reg. I),

(7.) they had the right of inheritance (clause 5 Sec. 8 Reg. I),

(8.) they had no recognized power of alienation by sale gift or otherwise without the previous sanction of Government (Sec. 9 Reg. I),

(9.) they were responsible for the peace of the country, clause 4 Sec. 67 Reg. VIII. and Reg. XXII. Preamble),

(10.) they were liable to be sued and imprisoned for arrears of assessment,

(11.) they had no power to grant leases extending beyond the term of their own engagements with the Government (Preamble Reg. XLIV).

(12.) they had the power of summoning, and if necessary, compelling the attendance of their tenants for adjustment and recovery of rent (clause 8, Sec. 15 Reg. VII. of 1799),

(13.) they had the power of inflicting corporal punishments on defaulters (Sec. 28, Reg. XVII of 1793).

Logically and as a fact, here each prohibition presupposes a previous right or practice.

What became their position under the Permanent Settlement by its expressed terms.

(1.) They were called the "proprietors of land" in sections 2 to 8 and Reg. I of 1793. Their right was called "propietory right" in Sec. 6 Reg. I "property in the soil" in Sec. 7 Reg. VIII of 1793, whereas talookdars had no such right and were not therefore entitled to a separate settlement (Sec 7. Reg. VIII.) Yet these talookdars had the rights of receiving rents from the ryots and of letting land to under-tenants or ryots. So that the words "preprietor" and "proprietory right" meant something more than a right to receive rent and let the land. As has been shewn before the phrase "proprietor of land" said to possess included valid lakhirajdar also and can not even a lakhirajdar be the "few and simple rights" of an English landlord?

(2.) The revenue payable by them was permanently fixed (sections 3 and 4 Reg. I.).

(3.) They were empowered to transfer their property by sale gift or otherwise without the previous sanction of Government (section 9 Reg. I.) Some opponents of Zamindars urge that fixity of the Government revenue was all that was intended by the settlement. If so, why this provision in the same document? Was not sale for arrears of revenue another object of the Permanent Settlement, and if so how could it be effected unless the estates themselves were declared saleable, and how could they

raise money on the security of the estates for purposes of improvement if they were not expressly allowed to mortgage them ?

(4.) They were empowered to resume a certain class of lakheraj lands and Mokurrori holdings as adverted to before.

(5.) They were confirmed in their possession of the nankur khamar, and nijjote lands whether they accepted the settlement or not provided they paid the apportioned revenue (Sec 39, Reg. VIII.)

(6.) Those who finally declined to accept the Settlement were allowed a malikana in consideration of their proprietory rights (Sec. 54, Reg. VIII.)

(7.) They were empowered to "let the remaining lands of their Zemindaries or estates, under the prescribed restrictions, *in whatever manner they may think proper*" (Sec. 52, Reg. VII.) The remaining lands were such lands as were not absorbed in the tenures of dependent talookdars istemrardars &c. of Sec: 48 & 49 Reg. VIII. What those restrictions were, will be seen hereafter.

(8.) Their estates were made liable to summary sale for arrears of revenue (Para 3 Sec 7 Reg. I.) This was the main object why the estates were declared transferable. Their body was also liable to arrest and confinement at first. (Sec 4 Reg. XIV of 1793.)

(9.) They were encouraged "to exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their own good management and industry and that no demand will ever be made upon them or their heirs, or successors, by the present or any future Government for any augmentation of the public assessment of their respective estates" (Para 2 Sec. 7 Reg. I.)

(10.) They were enjoined "to conduct themselves with good faith and moderation towards their dependent talook-

dars and ryots" and to require their officers also to have that way (Para 3 ditto.)

(11.) Government reserved the power of enacting laws whenever proper "for protection and welfare of the dependent talookdars and ryots"

(12.) the power of imposing sayer or other taxes such as abkari taxes was taken away from them (Sec. 35, Reg. VIII.)

(13.) The proprietors were ordered to revise and consolidate all the existing abwabs and mhatoots with the *assul* rent into one specific sum (Sec. 54, Reg. VIII.)

(14.) They were prohibited to impose any new abwab or mhatoot under any pretence whatever (Sec 55, Reg. VIII.)

(15.) They were ordered to grant pattahs to ryots for a period not exceeding 10 years and to determine rents in modes to be specified hereafter (sections 56 to 60, Reg. VIII. and Sec. 2, Reg. XLIV. of 1793).

(16.) Neither they nor the Government had the power to increase the rent of istemrardars who held land at a fixed rent for more than twelve years before the settlement (Sec. 49, Reg. VIII.)

(17.) They were prohibited from enhancing the rents of dependent talooks except under particular circumstances and to a prescribed limit. (Sec. 51, Reg. VIII.)

(18.) They had the power of ejecting all ryots khoodkasht or paikast having a right of occupancy or not, but not having "right of property or transferable possession" for arrears of rent even without recourse to law. Vide clause 7, Sec. 15, Reg. VII of 1799 which amongst other things provides:—"or if the defaulter be a lease-holder or other tenant, having a right of occupancy only so long as a certain rent, or a rent determinable on certain principles according to local rates and usages, be paid without *any right of property or transferable posses-*

sion; the proprietor of whom such tenures is held, or the former or other person to whom such proprietor may have leased, or committed his rights, must be understood *to have the right of ousting the defaulting tenant from the tenure he has forfeited by a breach of the conditions of it.*" Here the phrase "right of property" and "transferable possession" are convertible.

(19.) They were divested of their semi-regal powers of taking cognizance of suits (Sec 50, Reg. VIII), of keeping Police Establishments (Sec. 2 Reg. XXII of 1793), of appointing and paying cauzies and kanongoes (Sec. 34, Reg. VII), &c., &c., &c., and the responsibility for the peace of the country (clause 4 Sec. 6 & 7, Reg. VIII).

(20.) They were to remain bound by the terms of the settlement kabuliats not repealed by any Regulation (clause 1, Sec. 67, Reg. VIII).

(21.) Their power to summon and if necessary to compel the attendance of their tenants was maintained (clause 8 Sec. 15, Reg. VII of 1799.)

(22.) From 1799 they were empowered to realize rent from under-tenants and dependent talookdars by summary arrest and summary sale of the undertenures (Sec. 9 &c. Reg. XXXV. of 1795 and Sec. 14 & 15, Reg. VII of 1799).

(23.) Their power of coercion was restrained, and they were invested with the powers of distraint of not only the produce of the land but of all personal property and cattle of the defaulting ryots (Sec. 2, Reg. XVII. of 1793).

(24.) From 1812 they were free to grant leases for any period of time or perpetuity (Sec. 2, Reg. V. of 1812).

(25.) Phulkur, Bunkur, Julkur, belong to the proprietors (Preamble to Reg. XXVII. of 1793).

(26.) They had a right to the accretions and so had the subordinate tenureholders whether a khoodkast ryot

holding a mourassi, istemrary tenure at fixed rate of rent per bigha, or any other description of undertenant liable by his engagements or by established usage to an increase of rent for the land annexed to his tennure by alluvion," but not ordinary ryots (Sec 4, Reg. XI of 1825).

(27.) Purchasers at revenue sales got the estates free of all incumbrances and engagements with talookdars, tenants, and ryots and were entitled to receive "whatever the former proprietors would have been entitled to demand according to the established usages and rates of the Purgunnah or District . . . had the engagements so cancelled never existed" (Sec. 5, Reg. XLIV.of 1793.

(27.) In 1812 the Purgana rates being found very uncertain in many instances they were empowered to grant pattahs and make collections "according to the rate payable for land of a similar description in the places adjacent" not exceeding the highest rate paid within last three years where no establishad Purgana rates would be found (Sec 5 to 7, Reg. V of 1812.)

(27.) In cases of dependent talooks 10 per cent. to be allowed as profits (Sec. 8 ditto.)

(27.) In cases of intended enhancement notice to be given (Sec. 9 ditto.)

(27.) In 1822 they were expressly declared entitled to eject all ryots except khoodkast kudemee ryot or resident and hereditary cultivator, having a prescriptive right of occupancy and hereditary transferable tenures existing at the time of the Settlement though they were subject to enhancement (Sec. 32, Reg. XI of 1822.)

(27.) In 1845 power to eject all tenants except khoodkast or kudemee ryots having rights of occupancy at fixed rents or at rents assessable according to the fixed rules under Regulations in force was preserved (Sec 26 Act I of 1845.)

(27.) In 1859 "occupancy ryots" the creatures of Act X of 1859 alone were protected (Sec. 37, Act XI of 1859.)

The provisions of the Regulations in which ryots are referred to.

(1) Ryots are not referred to in Reg. I of 1793 the foundation of all rights except (*a*) with reference to "good faith and moderation" of para 3 section 7 and (*b*) "protection and welfare" of clause 1 section 8.

(2.) The disputes between them and their landlords referred to the Civil Court (preamble to Reg. II of 1793 and Section 59 Reg. VIII.)

(3.) Regulation III (extending and defining the jurisdiction of Dewanee Adwalut) addressed to *all* including ryots.

(4) The abwabs to be revised and consolidated with the *assul* rent into a specific sum (Sec. 54, Reg. VIII.)

(5.) No new abwab or mhatoot to be imposed on the ryots (Sec. 55 ditto.)

(6) They are to enter into engagements in which amongst other things term of the lease and stipulation for new engagement for remainder of the term in case of change of produce to be inserted (Sec. 56 ditto.)

(7) Rent *by whatever rule or custom it may be regulated and rate and proportion when it is payable after survey of the crop and measurement of the land to be specifically stated* (Sec. 57 ditto.)

(8) A specified form of pattah provided for (Sec. 58 ditto.)

(9) Rent being ascertained pattah may be demanded (Sec. 59 ditto.

(10.) Pattahs of *khoodkast* ryots not to be cancelled except on proof of collusion, or that the rents paid by them within the last three years have been reduced below the rate of the nirikbandi of the Purgunnah or that they have obtained collusive deductions *or upon a general measurement of the Purgunnah for the pur-*

pose of equalising and correcting the assessment (clause 2 Sec. 60 ditto.)

(11.) Patwaris to be maintained to keep accounts and to submit them to the collector, the object of these accounts being to facilitate decision of suits in the civil courts between the proprietors and farmers and *persons paying rent* or revenue (Sec 62 ditto.)

(12.) Receipts for rent to be given. Any person to whom a receipt may be refused, on his establishing the same in the Dewanee Adwalut, shall be entitled to damages (para. 1 Sec. 63 ditto.)

(13.) In cases of desertion of ryots the unpaid rents not to be levied on the remaining ryots (para 2 Sec. 63 ditto.)

(14.) Instalments of rents to be adjusted according to the time of reaping and selling the produce. Suit for damages allowed for non-compliance with this provision (Sec. 64 ditto.)

(19.) Grain, cattle, and all other moveable properties of ryots liable to distraint (proving the non-trasferability of ryoti holdings generally) (Sec. 2 Reg. XVII of 1743.)

(16.) Dewani Adwalut to punish illigal distraint (Sec. 11 ditto.)

(17) Corporal punishments on defaulters prohibited. Suit in criminal or Dewanee Adwalut allowed for disregard (Sec. 28 ditto.)

(18) Liabilities as per articles 27 to (27 F) under the preceding head.

(19.) If they omitted or refused to take pattahs, a notification in writing specifying that pattahs according to the form approved under the established rates were ready to be granted was considered a tender of pattahs and entitled the proprietors to demand rent (Sec. 5 Reg. IV of 1794.)

(20.) In cases of disputes Dewani Adwalut to determine the rates of the pattahs according to the rates established

in the Purgunnah for lands of the same description and quality (Sec. 6 ditto.)

(21.) Renewed pattahs to be at the same rates as those demandable by ryots at the first instance under Regulation VIII of 1793, *i. e.* at the rates not higher than the established rates of the Purgunnah for the lands of the same description and quality (Sec. 7 ditto).

The first thing therefore that strikes one is that whatever interest the ryots may have had in the land they had no "property in the soil"—they had not even that sort of interest which undertenants had, for otherwise they would have been entitled to possession of the accretions to their holdings. The Regulations define in their own way the rights of zemindars, independent talookdars, dependent talookdars, lakherajdars, aymadars, istemrardars, mouroosidars and so forth, but are entirely silent as to the rights of the ryots except perhaps that of khoodkast ryots, who held land from before the decennial settlement of 1790, who could hold on so long as they paid the proper rent, though even they could be ousted without recourse to law courts if they failed to pay that rent.

On the other hand I have already enumerated what rights and privileges were conferred on the zemindars and independent talookdars. Their jummah was fixed for ever, their tenure was declared hereditary and transferable, they were declared entitled to resume lakheraj lands and mouroosi holdings of a certain description, to the accretions to their estates, to jalkur or fishery Bonkur or Forest rights, falkur or fruits of trees and mines and quarries, they were empowered "to let the remaining land" (*i. e.*) land not absorbed in dependent talooks &c. in any manner they liked and they were declared "proprietors of the soil." If these provisions were not sufficient to make them "proprietors" in the English sense of the English word used by an English nobleman having landed property in his own country, as far at least as the jungle land and land not then in possession of subordinate holders

and ryots or to be subsequently vacated by them was concerned, I fail to see in what better way could they be made so. The Legislature was not going merely to give a new name to an old order of men. They were going to create, though not absolutely out of nothing, a new order of men on a plan which they had in their mind and if they called them "proprietors of land" after an order of men in their own country whose rights and privileges they well knew, what ought to be inferred therefrom? They evidently meant to invest them with the same rights and privileges that usually belonged to that order of men in their own country except so far as those rights and privileges were hedged in by the express terms of the Warrant itself which created or remodelled them.

Yet it was not a permanent settlement with only one class of persons having interest in land viz., the zemindars and independent talookdars. They and the Government were equally declared incapable of enhancing or increasing rent of istemrardars who held land at a fixed rent for more than 12 years before the permanent settlement (Sec. 45 Reg. VIII of 1793.) The permanent settlement consisted in a declaration of the permanency of the right (of enjoyment) and of the liability (to pay revenue or rent) No permanent settlement was therefore made with any other class of people connected with land far less with the ryots khoodkast or paikasht.

This view of the proprietor's rights was taken by so great an authority as Lord Lyndhurst in the case of Freeman *vs.* Fairlie (I Moore's Indian Appeals page 305.) But it has been said that that was the point at issue in the case. That was however the very first point that the Lord Chancellor proposed to himself to decide. His Lordship's words were:—"The first thing to be considered is, what was the state of landed property among the natives of India when the English settlement was originally established in that country." And then his Lordship goes on to refer to the Regulations of 1793. Assuming, however, that that was not the point directly at issue,

we yet find from the previous report of the Master that the point was raised and discussed by counsel on both sides by way of illustration and was not an opinion formed by such an eminent Judge after hearing counsel on both sides and maturely considering both sides of a case in which ownership of property depended upon the decision, entitled to more respect than the *exparte* writings and statements and *extempore* speeches of some officials though of high order, who had generally, speaking, a preconceived political or economical view to support.

It is not disputed that the holdings of ryots not excepting even khoodkasht kudemee ryots were not *per se* transferable. The proprietors were empowered "to let the remaining lands of their zemindaries or estates under the prescribed restrictions in whatever manner they may think proper." (Sec. 5 Reg. VIII of 1793.) The Hon'ble Justice Field has in his notes on enhancement conclusively shown, from the use of the word "restrictions" in the plural, punctuation and so forth, that the section applied to all lands whether jungle or in occupation of ryots not included in mourosi and istemrari tenures and independent talooks of sections 49 and 51. I will give some additional reasons for the same position. The provision is a general direction given to the proprietors as to what use they should make of the "remaining lands" so as to prevent them from turning these lands also to their khamar or nij jote, and as from their position and habit they were not themselves cultivators, and letting land to ryoti was the rule of their profession and letting in farm an exception, it could not have been meant "letting in farm" merely. It meant letting to ryots or farmers just as they chose and included in its scope both ryoti land or land already in occupation of ryots and unoccupied land including even such as was vacated by ryots, and jungle land brought under cultivation under the direction given in para. 2, Sec. 7 Reg I of 1793. The restrictions spoken of are given in sections 53 to 64 applicable under different circumstances.

An inherent power in the proprietors of enhancement of rent of all lands was taken for granted throughout the Regulations. And hence the Legislature found it necessary to make special exceptions where they thought them proper as in Sec. 49 of Reg. VIII applying to istemrardars of 12 years' standing. On this point the peculiar mode of wording section 50 is striking. It is headed with the words: "The following rules are prescribed *to prevent* undue exactions from the dependent talookdars." Then comes the Rule "First,"—"*No* zemindar.....shall demand an increase from the talookdars dependent on him.....*except* upon proof that....." So that the rule itself is presented as an exception to a general rule allowing enhancement and the positive rule for enhancement itself is tacked to it as an exception to an exception. It is not a positive rule enjoining for the first time enhancement of rent not otherwise allowable. It is also significant that while imposition of new abwabs has been expressly prohibited, there is no provision even like Sec. 51 Reg. VIII of 1793 and Sec. 18 Act X of 1859, preventing generally, and then providing special rules by way of exceptions to enhancement of rent in cases of ryots. It is remarkable that while the proprietors got the freedom of alienating the whole or any portion of their estates by sale gift or otherwise, they obtained at first power to grant leases for a term of 10 years only. It was, therefore, evident that rent could be readjusted at the expiration of every 10 years and if the ryots refused to pay such readjusted rent they were liable to be ejected. Vide Clause 7 Sec. 15 Reg. VII of 1799 quoted before in number (19). There can, however, be no doubt that so far as the ryots holding land from before the settlement (ryots who alone could demand pattahs in the first instance under Reg. VIII of 1793) were concerned, the rent could be at first enhanced up to the Purgunnah rates and no higher (Sec. 7 Reg. IV of 1874). But, as Mr. Field has shown, the rent of even such a ryot, though khoodkasht was liable to enhancement "upon a general measurement of the Purgunnah for the purpose of equalizing and correct-

ing the assessment," the recognized mode of enhancement and assessment followed before the permanent settlement and expected to be followed though not always actually followed thereafter (Sec. 60, Clause 2, Reg. VIII of 1793). So that the very prescribed mode of assessment involved an element of enhancement and that was one of the rules or customs referred to in Sec. 57 Reg. VIII of 1793. The Purgunnah rate, whatever it might mean, had however been obliterated on account of competition and contract rates introduced, before 1812, and therefore Regulation IV of that year in Sections 5 and 6 laid down express rules of enhancement. But be that as it may, it is now unnecessary to enquire whether there was a permanent Purgunnah rate or a progressive one as the framers of Act X of 1859 presumed there was. Under that impression they enacted Sec. 3 of that Act, which now protects the successors of the permanent settlement ryots at fixed or unchanged rates from further enhancement. Sec. 37 Clause 1 Act XI of 1859 further protects them from ejectment even after revenue sale. It is Sec. 4 of Act X prescribing a presumption which may include holdings which in fact did not exist at the time of the Permanent Settlement that is much complained of. But it must be conceded that it is now too late to rectify that palpable infringment of the terms of the Permanent Settlement.

The Government in short made over to the proprietors all its powers including that of enhancement and ejectment which it admittedly had and which it exercises up to this day where there is no permanent settlement and in its own estates, except those which it expressly reserved to itself, viz., the powers of imposing internal duties and taxes, of managing the police, of administering justice through its own courts. and of making laws. Vide Reg. II to VII, IX to XIII, XVI, XVIII, XX, XXII to XXIV and XLI.

The several and successive revenue sale laws throw a flood of light on the respective rights and privileges of the several parties interested in land.

The earliest law, the law that was passed simultaneously with the Permanent Settlement viz, Sec. 5 Regulation XLIV of 1793, made no distinction even between the khood-khasht kudmi ryots and ordinary ones, but provided for cancellation of all leases pattahs and engagements whether with dependent talookdars, farmers, under-farmers, ryots, or cultivators. This involved enhancement and ejectment all round, for farmers and under-farmers holding only a temporary interest were placed on the same category with the ryots and all others. Next came Reg XI of 1822. Its Section 29 provided that the act of sale transferred to the purchaser "*all the property and privileges which the engaging party possessed and exercised at the time of the settlement* free from any accidents or incumbrances &c."

Section 30 provided :—"In pursuance of the principle of holding the estate of a defaulter answerable for the punctual realization of the Government revenue *in the state in which it stood at the time the settlement was concluded at which time by dissolution of its previous engagements, the Government must be considered to resume all rights possessed on the acquisition of the country* save where otherwise specially provided, all tenures which may have originated with the defaulter or his predecessor being representatives, or assignees of the original engager *as well as all arguments with the ryots or the like settled or credited by the first engager or his representatives subsequently to the settlement,* as well as tenures, which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or reverse, *shall be liable to be avoided and annulled by the purchaser* of the estate or mehal &c."

Section 32 provided that the above rules should not be construed to entitle the purchasers "to disturb the possession of any village Zemindar, puttedar, muffussil Talookdar *or other person having an hereditary transferable property in the land or in the rents thereof,*" or to eject a *khood-kasht kudmi ryot, or resident and hereditary cultivator having a prescriptive*

right of occupancy" or to demand a higher rate of rent &c. &c. Section 33 provided:—Persons purchasing at a public sale who may be desirous of enhancing rents of their undertenants shall as heretofore be required in the absence of *specific engagements* to serve a formal notice of their intention as provided in section 9, Reg. V of 1812; but nothing in the said section was intended or shall be construed to affect the right of any individual possessing a transferable hereditary *right of occupancy to contest the justness of the demand so made* and to pay his rent, as heretofore until the contrary shall be decided by a competent Court of Justice. Nor in any respect to annul or diminish the title of the ryots to hold their land subject to the payment of *fixed rents*, or *rents determinable by fixed rates*, according to the law and usage of the country."

Here for the first time an attempt was made to define the rights and privileges of some of the parties interested in the land and to declare them explicitly :—

(*a*) That at the Permanent Settlement all previous engagements of the Government were dissolved and the Government resumed all its rights possessed on the acquisition of the country, that is the rights of an absolute sovereign acquired by conquest, having the power to deal with all properties as it liked, *save where otherwise specially provided.* This vague exception served only to make the rule the more conspicuous. The declaration was made however to justify the subsequent declarations.

(*b.*) That the auction purchaser was to obtain the estate in the same condition in which it stood at the time of the Permanent Settlement.

(*c.*) That therefore he was entitled to annul and avoid all engagements which the original engager was entitled to do (*vide* Sections 18 and 41 Reg. VIII of 1793. lakheraj holding &c.

(*d.*) That he was entitled to annul and avoid all subsequent engagements made by the previous engager subsequently to the Permanent Settlement.

(*e.*) That he was entitled to disturb the possession of, that is, to eject all undertenants except village zemindars, puttidars (two classes perhaps known only in the North-Western Provinces), mufussil talookdars &c. (Sections 48 and 51 Reg. VIII of 1793.)

(*f.*) That he was entitled to eject all ryots except *khoodkasht kudemee ryots or resident and hereditary cultivators having a prescriptive right of occupancy.*

(*g.*) That he was entitled to enhance the rents of undertenants in the mode prescribed by Sec. 51, Reg. VIII of 1793.

(*h.*) That he was entitled to enhance the rents of existing ryots whose engagements provided for enhancement without any notice.

(*i.*) That he was entitled to enhance the rents of all other ryots after a notice under Sec. 9, Reg. V of 1812.

(*j.*) That he was entitled to do so in both the cases (*h*) and (*i*) without a suit.

(*k*) That the ryots were however entitled to contest such demand in a Court of Justice, thus the burden being thrown on them to prove the impropriety of the enhancement.

(*l.*) That so far as the ryots existing at the time of the Permanent Settlement were concerned, there were among them two classes of ryots, *viz.*,—(1) those whose rents were fixed, (2) and those whose rents were determinable by fixed rates but not yet fixed.

(*m.*) That the rights of those two classes of ryots, if any, were not affected by Sec. 9 Reg. V of 1812, which the section however never professed to affect.

(*n.*) That written engagements so much insisted upon by earlier Regulations were assumed to have been entered

into providing for such enhancements (specific engagements of Sec. 33)*.

As regards (*f*) the pattahs of khoodkhast ryots, if *bona fide* and stipulating to pay rents at the full Purgunnah rates or nirikbundi, were protected from cancellation at the Settlement by Clause 2 Sec. 60, Reg. VIII of 1793; but Sec. 5 Reg. XLIV of the same year made them liable to be affected by a revenue sale. But in 1822 these ryots had become kudemi or old and hereditary and had acquired *a prescriptive right of occupancy* by *sufferance* of the zemindars. These were now absolutely protected from ejectment.

To leave no doubt on this power of ejectment Sec 26 of Act I of 1845 was enacted as follows:—"XXVI. And it is hereby enacted that the purchaser of an estate sold under this Act, ...shall acquire the estate free of all incumbrances which may have been imposed upon it after the time of settlement and shall be entitled after notice under Sec. 9, Reg. 5 of 1812 to enhance at discretion (anything in the existing Regulations to the contrary notwithstanding) the rents of all undertenures in the said estate, and *to eject all tenants thereof*, with the following exceptions:—

"*First.*—Tenures which were held as istemrari or mokurruri at a fixed rent more than 12 years before the Permanent Settlement (Sec. 49 Reg. VIII of 1793.)

"*Secondly.*—Tenures *existing at the time of the decennial settlement*, which have not been or may not be proved, to be liable to increase of assessment on the grounds stated in Sec. 51 Reg. VIII 1793 (*e*).

"*Thirdly.*—Lands held by khoodkasht, or kudemi ryots having rights of occupancy at fixed rents or rents assessable according to fixed rules under the Regulations in force. (Here the holdings under heads (*f*) and (*l*) were rolled up together—holdings protected from enhancement by Sections 3 and 4 Act X of 1859.)

"*Fourthly.*—Lands.....for the erection of dwelling houses, &c.

"*Fifthly.—Bona fide* farms for 20 years &c....."

It has been contended that these are new powers given to auction-purchasers by Government which undoubtedly had and has the power to pass any measure for protection of its revenue. The argument concedes at least one of my positions that the Government was no respecter of private rights when its own interests were concerned and shows which way the wind blew when the Permanent Settlement was effected. But the Government here did not profess to act in that arbitrary fashion. All these powers were involved in the general proposition "the Act of sale transfers to the purchaser all the property and privileges which the engaging party possessed and exercised at the time of settlement", as laid down in the beginning of Sec. 29 Reg. XI of 1822 and that proposition was the substance of Sec. 5 Reg. XLIV of 1793 being one of the very conditions of the settlement. The first engager must have had these powers or otherwise the purchaser who got only *his* powers could not be authorized to exercise them.

It will further be observed that it was no mere *khudkasht or resident ryots*, or resident, ryots settled after the settlement, but *khoodkasht kudemi* ryots or *resident and hereditary ryots* having a PRESCRIPTIVE right of occupancy that were protected from ejectment. "Prescription" presupposes lapse of time and the word "hereditary" shows that the ryot must have inherited the lands from his ancestors and hence the jotes must have existed at the time of the Permanent Settlement at the least.

This power of summary ejectment could not be ignored even at the time when Act X of 1859 was passed, for what did Sec. 25 of the said Act enact? It provided for assistance to be given by collector in ejecting ryots not having right of occupancy and farmers for a limited period. Even Sec. 6 which scattered the right of occupancy broadcast on khoodkasht as well as paikasht ryots contained a tacit provision for ejectment in case of non-payment of rent though enforcible through courts alone (Sec. 78) for the

right of occupancy is to subsist *so long as the ryot pays rent.* The right to enhance rent was expressly recognized by Act X.

I may therefore consider that I have been able to prove the following general propositions. By the terms of the Permanent Settlement the proprietors had these powers regarding the land not covered by istemrari tenures and dependent talooks:—

(*a.*) As regards lands then in the possession of khoodkasht ryots a right to receive only the rents then payable according to the Purgunnah rates.

(*b.*) A right to enhance their rents upon a general measurement of the Purgunnah for the purpose of equalizing and correcting assessment and thus fixing a new Purgunnah rate.

(*c.*) Since 1822 no power to eject them or to enhance the rents of those who paid fixed rents.

(*d.*) The rents of those who paid at fixed rates could be enhanced only upon increase of area or according to the nature of produce after measurement.

(*e.*) That there were no distinction between khoodkasht ryots who were settled afterwards and the paikasht ryots.

(*f.*) That at the expiration of the term of their leases those ryots were liable to be ejected, but if their leases were renewed they were to be renewed at the established Purgunnah rate.

(*g.*) That as regards lands then full of jungle or though within the cultivated area yet not in the occupation of ryots these were at the absolute disposal of the proprietors. They could cultivate them themselves and thus "increase the cultivation and enjoy the fruits" or let them on rasadi terms *i. e.*, rent free for some years and then at progressive rates or rates below the Purgunnah or general rate, or if there was competition for land at higher rates than the prevailing rates, though up to 1812 the full Purgunnah rates could be assessed on those lands at the end of every 10 years. After 1812 they could let those

lands even rent free for ever so far as themselves and their representatives and heirs were concerned. (Vide Full Bench Ruling at page 1 W. R. 9.)

(*h.*) On account of the competition or contract rent thus introduced the old Purgunnah rate had been almost obliterated by 1812 or in the course of 19 to 22 years, and hence where no such rate could be ascertained "the rate payable for land of a similar description in places adjacent" was introduced as the standard by Sec. 7 Reg. V of 1812.

(*i.*) That there was only a limited area of khamar or nij jote lands on which even khoodkasht ryots would not acquire any right and though there was no absolute prohibition to convert jungle and unoccupied land into such khamar or nij jote, yet proprietors were generally not required to do so.

(*j.*) That written engagements were enjoined for adoption in every possible case.

(*k.*) That the ryoti holdings as a rule were not transferable though under-tenures might be so by express stipulation or custom.

(*l.*) That subject to the rights of istemrardars, dependent talookdars and khoodkast kudemi ryots or hereditary resident ryots having prescriptive rights of occupancy where they existed, the proprietors were the absolute owners of the soil.

From these propositions it follows that Sections 3, 4 and 6, Act X of 1859 are clear infringements of the terms and intentions of the Permanent Settlement. Section 6 indiscriminately conferred the right of occupancy on khoodkasht and paikasht ryots and on even tenants-at-will who had been allowed to hold continuously for 12 years before the passing of the Act to which a retrospective effect was given without notice. Is it therefore surprising that the more wakeful landholders of Behar took steps to prevent the

growth of more occupancy holdings by not allowing the ryots to hold the same lands continuously for 12 years? Were these landlords wrong, who in some instances, had a stipulation entered into kabulíats to the effect that no right of occupancy should grow from length of possession, when Section 7 clearly allowed them to do so?

Similarly Sec. 18 throws great obstacles in the way of enhancement of rent.

Even as it is, it is now said that Act X did not go far enough, that it is no exhaustive law on the subject, that it has done injury to the khoodkasht or resident ryots who, it is said, acquired a right of occupancy from the moment they were settled upon any land. But as we have seen, the law does not bear out any such claim of the ryots. It was the khoodkasht kudemi or resident old and hereditary tenants who acquired the right by prescription in virtue of their holding from before the Permanent Settlement. If custom gave rise to such a right in the North-Western Provinces as is alleged, such a custom, so far as I am aware, did not obtain in Bengal. No decided case of any time before Act X of 1859 has been cited bearing upon the custom. It ought not to be inferred from the mere sufferance of the landlords to allow khoodkasht ryots to hold on, for khoodkasht ryots paid higher rent and were more amenable to the landlord's influence. A decided, case in which the right was asserted, disputed, judicially declared, could alone substantiate the claim. Where an enactment is not exhaustive on the subject dealt with, it is expressly so stated in the preamble as in the Contract Act (IX of 1872) whose preamble says:—"Whereas it is expedient to define and amend *certain parts* of the law relating to the contract, &c." When there is an intention of preserving the existing customs and usages a section is inserted in the body of the law itself to that effect as Sec. 1 Reg. XI of 1825, which saves them as to the law of alluvion and diluvion. But what does the Preamble to Act X of 1859 say? It runs as follows:—"Whereas it is expedient to re-enact with

certain modifications, the provisions of the *existing law* relative to the rights of ryots with respect to the delivery of pottahs and the *occupancy of land*, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same ; &c. &c. &c." Then by Sec. 1 it repeals all the provisions in the Regulations and Acts on those subjects. Now the words "existing law" would include enactments as well as customs and usages having the force of law. If these were intended to be preserved the words "existing Acts and Regulations" would have been used or an express provision like Section 1 Reg. XI of 1825 would have been inserted. Again it was no mere re-enactment of the "existing laws" by way of substitution and mere codification. It was re-enactment with "certain modifications." Now the clear effect of this was that even if there was any such custom it was modified by Sec. 6 which therefore became the sole law on the subject of occupancy right. In the subsequent Act passed 10 years after (Act VIII of 1869 B. C.) the same section was bodily reproduced and nothing about the alleged custom provided. Is it possible that had there been any such custom prevailing in the country the Supreme Legislature and then again the Local Legislature with 10 years' experience of the working of Act X of 1859 through its own executive fiscal authorities and not the Civil Courts to assist it, would omit all mention of custom in a law expressly and in fact enacted with the sole view of conferring benefits on the ryots ?

Any further extension of the occupancy right and making it transferable without consent of the landlord and irrespective of custom and contract would therefore be a further encroachment on the rights of the proprietors.

Sections 45, 47, 49, 50 except clauses *(a)* *(b)*, *(c)* and *(g)*, 56. and 57 of the Tenancy Bill are therefore objectionable.

As to making the occupancy right transferable, much is said about the magic of property and of the advantages of the Zemindars themselves which will accrue therefrom as the holdings

themselves will be security for their rents. But the simple reply is that no body has a right to transfer one's property to another without his consent. The men who have actually to deal with the ryots know what is advantageous to them. They know that when an order is passed for ejectment in case the arrears adjudged are not paid within 15 days (the present law), that order is far more readily obeyed than an order without such a penalty as in cases of arrears on account of undertenures which have to be attached in the first place and if a claim is laid to it by a third party that claim has to be decided. In the next place a sale proclamation has to be issued and if a sale takes place after a month and an objection is taken to set aside the sale on the ground of irregularity in publishing or conducting the same the objection has to be decided. But whether such objection is taken or not the sale cannot be confirmed before 2 months in expectation of such an objection and before the sale is confirmed the money can not be paid to the decree-holder. It is said that ninety per cent. of the ryots have already acquired the right of occupancy and if the proposed changes in the law be made the remaining 10 per cent., will acquire it in no time. Then fancy the difficulties of the zemindars in realizing rents in that cumbrous and dilatory way specially when there is a combination of the ryots against their landlords. It is said that in many parts of the country the occupancy right has already become transferable by custom or by the action of the landlords themselves. Where the latter is the case there must be circumstances and reasons to account for it, and *it is all that is to be wished.* But that is no reason why others should be forced to conform to this mode of action. But of the alleged custom I have not been able to see one instance in which it was proved in my experience of nearly 18 years in the Districts of Nuddia, 24-Purgunnahs, Moorshedabad, Backergunge and Dacca. And indeed how could a valid custom regarding occupancy right arise when the right itself was created the other day? Custom in order to be valid must be immemorial, Vide

Clause 8 Sec. 15 Reg. VII of 1799, and as an instance of legislative recognition of a valid custom Sec. 1 Reg. XI of 1825. I believe that instances of transfer of occupancy right were those of the right of khoodkasht kudemi ryot and not of those created by Act X of 1859. Ryots somtimes sell such rights but landlords do not recognize such transfer by receiving rents from the purchasers unless they pay them *salami* or submit to an enhancement of rent. But be that as it may, the alleged custom involves a tacit consent of the landlord in allowing such a custom to grow. On account of local peculiarities he finds it advantageous to himself to allow the custom to grow, but that is no reason why this natural growth should have an artificial stimulus and be allowed to spring up all over the country irrespective of such local peculiarities. But such as the right now is the transfer is not so very injurious to the zemindar. According to Section 6 the ryot "has a right of occupancy in the land—. . . . . for *so long as he pays the rent payable on account of the same.*" So that the moment he discontinues to pay rent he may be sued for arrears coupled with a prayer for ejectment. A recognized transfer of the right does not and cannot change its nature. The transferee gets it as it is, so that where a custom of transfer has grown up, the landlord has yet an option either to bring the right to sale or to obtain a decree for ejectment. This vital difference between the right as it at present exists and the proposed one is lost sight of throughout the whole discussion If the right of transfer were to be conveyed in this modified form much of its obnoxiousness would be taken away. It is not for mere pleasure of ejecting the old ryots that the proprietors are anxious to retain the power of ejectment. It is not even often resorted to. The very consciousness that such a power exists in the landlords induces the ryots to be punctual in payment of rent. Proprietors receive a *bonus* or *selami* for conveying permanent and transferable right in land by what is called a mourusi lease. It has been doubted that they receive such consideration.

But have enquiries been made on the subject? Even so long ago as in 1793 the legislature apprehended diminution of the jumma itself owing to the custom of *selami*. See Preamble to Reg. XLIV. of 1793. If the landlord is to pay price for his own land in future if he wants to bring it into his khas possession, it is but bare justice that he should receive something at the inception of such a right. They obtain a *bonus* for creating under-tenures and another for registering its transfer, a custom recognized and confirmed by even the Bill Sec. 27. But why should this not be the case in cases of transfer of occupancy rights which with power of subletting, transfer and so forth, would not much differ from under-tenures? It seems to me that in all the discussion the difficulties of an auction purchaser have not been borne in mind at all. Even now in anticipation of the day of sale proprietors create fictitious tenures in the names of their relatives and dependents and offer no end of troubles to the purchasers in revenue sales in taking effectual possession. This is particularly the case in Eastern Districts as Backergunge. But if the right of occupancy is made transferable with a right of preemption in favor of landlords the law itself will place the means of harassment in the hands of Mazools or out-going proprietors. They will always take care to see that the right is not merged in the superior right according to the provisions of clause B. Sec. 141 of the Bill.

I fail to see the justice or expediency of Sec. 56, for why after purchase with money a landlord should not have the same right as other purchasers of subletting without the sublessee acquiring a right of occupancy against him? If this section is preserved the landlords will be sure to take a heavy *bonus* before he lets such land to ryots, and if there be the present competition for land, a competition which is beyond the power of human laws to check, the land will not lie idle in his hands. In short if this Bill is passeed no land will be let in future without *bonus*.

If, then, it be finally determined to attach the proposed incidents to the occupancy right I would suggest it to be done in

either of the manners following:—(I.) Let an occupancy ryot desirous of converting his holding into a transferable one offer a *bonus* (say a year's rent) to the landlord and demand a transferable lease for the same and if the landlord refuses to grant one, then let him sue the landlord for such a lease on deposit of the amount in Court. This will test whether there is any great desire on the part of the ryots to acquire such a right. (II.) To leave the power of ejectment in the landlord and to require the transferee to register the transfer and pay a fee equal to say half a year's rent. The right of preemption to be left to the landlord in either case.

The next feature of the Bill is its utter disregard for contracts. Pattahs and kubuliats not even defined in the Bill have been in vogue from the Mahomedan period, for the very names are Mahomedan. It has been shewn before what strenuous efforts the Legislature of 1793 made to extend written engagements. This was done at a time when reading and writing were confined to Brahmins and Kyastas. Now a century of British rule has elapsed and mass education has become the order of the day. The order of development in this respect according to Sir Henry Maine's "Ancient Law" is from custom to contract. But the Bill takes away not only freedom of contract from the ryots but makes all previous contracts null and void. Sir John Peter Grant in all his anxiety to protect the indigo ryots from the indigo oppression did not think fit to declare the indigo contracts null and void but left each contract to be tried by its own merits and circumstances. Even so far back as in 1812 registration of indigo contracts was left optional (clause 3 Sec. 3 Reg. IX of 1812)

There should therefore be a provision maintaining all existing contracts written or oral and no unnecessary obstacles should be thrown in the way of freedom of contract.

The next great question is the question of enhancement. All rent disputes are traceable to Sec. 6 and 18 of Act X of 1859. They put an end to all amicable adjustment of rent for ryots

would not come to any terms knowing the difficulties of the landlords to enhance it. On the other hand the rise of prices tempted the landlords to try the effect of Sec. 18 and courts were flooded with rent suits. Such must be the effect of all attempts to throw obstacles in the way of the operation of natural laws of competition and demand. If the laws of political economy are to be resisted to be of any effect they ought to be resisted in their entirety. There ought to be a check upon population by means of stringent marriage Laws. There ought to be protection given to native arts and industries. There ought to be organised migration of the surplus population to parts thinly populated. Instead of that the freedom of marriage in the most obnoxious form is allowed as ever. The principles of free trade introduced into the country ruined the artizan classes and threw them upon the land. The last semblance of protection in the shape of a small import duty was taken away at last and no *impetus* to export trade in the principal produce of the country was given by removing the export duty on rice. The demand for increased food to feed an increased population gives no rest to land and exhausts its productive powers. Hence we see the necessary consequences of over-population viz., the famines, pestilence, the epidemics, the poverty for which the landlords are not in the least responsible, for otherwise why are they more frequent in places where there is no Permanet Settlement? They are often the result of providential visitations such as successive droughts or inundations. All arguments drawn from famines for putting a check upon free adjustment of rent are, therefore, as it seems to me, inapplicable to the nature of the case. Such checks may impoverish or at least keep in *statuo quo* the landlords without any improvement in their condition, but can not improve the condition of ryots for any legth of time. If increase of population is not checked and no new fields for labour and industry are opened, the same difficulties will present themselves in a few years. Famine arguments may be good for imposing a famine tax upon the landlords in years of scarcity, but not for putting

permanent checks upon the power of enhancing rent. They would perhaps justify the imposition of the Public Works Cess.

Enhancement of rent was no new privilege conferred by Act X as has been shown before. It was rather curtailed by that enactment. If some of those clogs are partially removed no compensation ought to be demanded from the landlords on that accout in the shape of new rights and privileges granted to the ryots.

The idea of a table of rates and produce is not bad and may work some good in Eastern Districts. But the rates are so variable in other parts of Bengal that it is doubtful if any equitable rates can be determined there.

But the maximum rate of 1-5*th*, will, I fear, lead to abatement in many places, enhancement being out of the question. While the Mahomedan rules and customs are invoked in so many other ways why the $\frac{1}{3}$ share of Akbar is ignored? If the British Indian Association proposed $\frac{1}{4}$ share, let the members of that body be bound by it by a special provision, but why should the other zemindars who did not elect the Association as their representatives be bound by it? One-fourth share would, however, be a very fair rate to the ryots. Those who cultivate land on Borga or Bhagjote system pay one half and sometimes 10 annas of the produce to the owners of the land. By the other half they not only secure mere wages of labor and interest on the capital but substantial profits or otherwise it is difficult to conceive how there are Borga ryots from generation to generation having no other means of livelihood? For occupancy ryots then if another $\frac{1}{4}$ is allowed they obtain it clear even if they let their land in Barga, and would make them equal partners with the landlords in the produce of the soil. The proposed "compensation for disturbance" would be another infringement of the rights of the proprietors for they have a right to eject a ryot under cartain circumstances and the ryot is fully aware of it when he takes up a land.

Before going into the details of the Bill I think it necessary to consider whether by the terms of the Permanent Settlement itself

the Government has the power to make the proposed changes in the law above adverted to. This power is said to have been reserved by clause first, Sec. 8 Reg. I of 1793.

It has been shown before that prior to the Permanent Settlement the proprietors of land used to exercise semi-regal powers. When therefore the Government declared the jummah fixed for ever and confirmed the proprietors in the possession of the estates with absolute power of transfer by Sections 1 to 7 Reg I of 1793, and thereby ceased to have anything to do directly with the ryots, dependent talookdars &c., they were apprehensive lest the proprietors would abuse those powers and determined to divest them thereof. A new order of administration was introduced along with the Permanent Settlement and 48 Regulations were passed on one and the same day (1st May 1793) on all possible subjects, revenue, fiscal, excise, commercial, judicial, criminal and so forth. But as the proprietors hitherto enjoyed those powers they might hereafter grumble and object to pay the fixed jummah unless the divestment was made one of the conditions of the Permanent Settlement. Hence the enactment of Sec. VIII Reg. I of 1793 which Regulation together with its amplification namely Reg. VIII of the same year and date may be said to contain the germ of every subsequent Regulation or Act, by way of justification. Section 8 is as follows:—"To prevent any misconstruction of the foregoing articles the Governor-General in Council think it necessary to make the following declarations to the zemindars, independent talookdars and other actual proprietors of land. *First.*—"It being the duty of the ruling power *to protect all classes of people* and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the *protection* and welfare of the dependent talookdars, ryots, and other cultivators of the soil; *and no zemindars, independent talookdars or other actual proprietors of land, shall be entitled on this account to make any*

objection to the discharge of the fixed assessment which they have respectively agreed to pay." *Second.*—(After reciting the abolition of the sayer collections and compensations made to the proprietors on that account.) "And he now declares that if it should hereafter think it proper to re-establish the sayer collections or any other *internal duties*, and to appoint officers on the part of Government to collect them, *no proprietor of land will be admitted to any participation thereof, or be entitled to make any claims for remission of assessment on that account.*" (Here see Sec. 35 Reg. VIII of 1793 which is an amplification of this clause including in its purview the Abkari or Excise duties and other taxes. *Third.*—"The Governor-General in Council will impose such assessment as he may deem equitable, on all lands at present alienated and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles. The assessment so imposed will belong to Government and *no proprietor of land will be entitled to any part of it*" (see Sec. 36 Reg. VIII of 1793.) *Fourth.*—Provides that the jummah is to be "entirely unconnected with and inclusive of" the allowances hitherto made for keeping of Thannas or Police establishments whose charge is taken up by Government, and of the produce of the land assigned for the purpose, which lands may be resumed by Government. *Fifth.*—Declares the estates of disqualified proprietors exempt from sale for arrears of revenue and so forth (see Sections 20 to 22 Reg. VIII of 1793.)

Accordingly the following Regulations and parts of Regulations were passed on the basis of those terms or conditions of the Permanent Settlement and by way of their amplification. I state them in their reverse order so as to come to the first condition or declaration last as it is the subject of contention.

Regulation X (for disqualified proprietors) and Reg. XXVI (for extending the term of minority) were based on the *Fifth.*

Regulations XXII and XXIII (Police Regulations) were based on the *Fourth.*

Regulations XIX and XXXVII (for resumption of lakheraj lands) were based on the *Third.*

Regulation XXVII (abolition of sayer, internal duties and taxes, and compensations), Reg. XXXIV (tax upon intoxicating liquors and drugs) and Reg. XLII (for collection of the Government and Calcutta customs) were based upon the *Second.*

I may further state that Reg. XIV (for recovery of arrears of revenue by confinement &c., of the proprietors) was based on the declaration in the first part of para. 3 Sec. VII where the discharge of revenue is declared an indispensable duty of the proprietors; Reg. XLIV (Sec. 5 laying down the effect of sale for arrears of revenue) was based on the last part of the said para providing for such sale; Reg. XI (for removing certain restrictions to the operation of the Hindu and Mahomedan Laws, with regard to inheritance of some large estates); Reg. XXXVI. (for registering Wills and Deeds for transfers or mortgages of real property) were based upon Sec. IX; and Reg. XXV (for division of estates) was based upon Sec. X.

Were then no Regulations passed based upon and in accordance with the First condition or declaration? There must have been some Regulations and parts of Regulations passed for the immediate "protection and welfare" of the ryots, though there might be others passed subsequently as occasion demanded. Regulations 21, 24, 28, 29, 30, 31, 32, 35, 38, 41, 43 and 44 (on keeping zillah records in native languages, pensions, British subjects, residents, salt-agents, salt, commercial residents, opium, coins, civil servants acquiring land, Regulations, grants to invalid soldiers and Registration of estates respectively) obviously do not come under those Regulations. Which Regulations then they could be but the very first block of Regulations after Reg. I, namely, Regulations II to VII for abolition of revenue courts, civil jurisdiction and establishment of independent civil courts of the several grades with their Procedure, as this was the very first condition or declaration, and some other Regulations and parts

of Regulations as some parts of Regulation VII and Regulations 9, 13, 15 to 18, 20, 33, 39, 40, 45 to 47?

From certain portions of the Preamble to Regulation II it has been argued that civil courts were established for the protection of the proprietors. But certain other portions thereof were altogether lost sight of in that argument. These other portions are:—"All questions between Government and the landholders respecting the assessment and collection of the public revenue and *disputed claims between the latter and their ryots &c.*,..... have hitherto been cognizable in the courts of Mal Adwalut or Revenue Courts."

Again "all financial claims of the public when disputed under the Regulations, must be subjected to the cognizance of courts of judicature, superintended by judges who, from their official situations, and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and *also between the latter and their tenants.*"

The ryots were expressly referred to the Dewany Adwalut to sue for damages for refusal to give receipts for rent (para. 1 Sec. 63 Reg. VIII), illegal distraint (Sec. II Reg. XVII), for confinement or infliction of corporal punishment (Sec. 28 Reg. XVII) and for determination of rates of rent in case of dispute (Sec. 6 Reg. IV of 1794.) Sec. 55, Reg. VIII imposed penalty for levy of any abwab in future and Sec. 64 for non-adjustment of instalments of rent, and how these penalties were to be enforced except through the Dewany Adwalut?

Regulation VIII thus abolished imposition of future abwabs and prohibited the proprietors to take cognizance of or interfere with causes coming within the jurisdiction of the civil courts (Sec. 66.)

Regulation XVII defined and restricted the power of distraint (Sections 2, 3, 4,) and abolished confinement of ryots and infliction of corporal punishments.

Regulation XXXIII provided for repairing of public embankments and encouraging the digging of tanks &c.

Regulation XLVI provided for suits in *forma pauperis.*

These Regulations then show the nature and scope of the "protection and welfare" of ryots and dependent talookdars intended by clause *First* Sec. 8 Reg. I of 1793. That would not include the power of divesting the proprietors of any of their inherent rights, namely, those of ousting a ryot for non-payment of rent, of enhancing the rent under certain circumstances, of imposing any rent on a new ryot; and of investing the ryots with any of those rights, namely, that of occupancy against the will of the landlord and of transferring the right of sale gift or otherwise, at least without either a proportionate remission of revenue or adequate compensation. Indeed the wording of the clause itself leaves no doubt on the point. The first line of the clause defines the nature of the protection intended. *It being the duty of the ruling power to protect all classes of people,* the Governor-General in Council reserves the power of enacting laws for protection of the ryots. So that the intended protection of the ryots was to be of the same kind that it is the duty of Government to afford to all classes of people. Now the duty of protecting all classes of people would mean merely the duty of maintaining each member of society in the enjoyment of all his personal, proprietory, contractual and customary rights and not of divesting one community of any of its rights and investing another with the same without compensation. Protection presupposes existence of rights and privileges and apprehended infringement thereof. It does not involve creation of new rights for one class with restrictions upon the old ones of another. If the ryots had no power to transfer their holdings the clause does not empower the legislature to declare them transferable, and if the landlords have the power to eject them for non-payment of rent they cannot be divested of that power.

The word "welfare" is very vague and yet Reg, XXXIII for embankments and tanks and reservoirs would show what was meant

by it. The imposition of the Road-cess for extension of Roads as means of carrying produce of land to markets and distant parts of the country would perhaps be justifiable under this word.

Accordingly we find that from 1793 to 1859 no law was passed infringing those inherent rights and privileges of the proprietors and all changes in the law were directed towards improvement of the procedure for recovery of rent, execution of decrees, improvement of courts and restrictions on power of summary arrest and imprisonment, distraint and the like. Clause *First* Sec. 8 Reg. I of 1793 must be so construed as not to militate against the other sections of that Regulation and their amplifications in Reg. VIII of 1793, as required by Sec. 19 Reg. XLI of 1793 referred to before, and the complementary, supplementary, explanatory Regulations passed along with it and soon after.

As for any necessity for change in the Rent Law my experience is limited, but so far as it goes I am of opinion that since the indigo disturbance the tables are turned and in Bengal it is the ryots who now oppress the zemindars by their combinations. Even now there are two account cases against Tehsildars pending before me in which those Tehsildars in combination with the ryots have hitherto successfully baffled not only the Putnidars but also the Amin and the court in deciding those two long pending cases. But perhaps the khas mehal ryots of Midnapore have put this fact beyond all disputes in their contest against the Government.

The case may be different in Behar of which I have no personal experience. If the state of things there is such as is described in the Reports and speeches it ought to be dealt with separately. The rights and privileges of Bengal proprietors ought not on that account, to be curtailed. Behar and Eastern Bengal, may be regarded as two opposite poles. Western Bengal, the middle region of calm, therefore hardly requires any change in the law.

I am aware that since the passing of the Road-cess Act which threw an additional burden on the zemindars, they clamoured for

a more expeditious procedure for recovery of rent and change of *forum*. They forgot that the Civil Courts were not to blame for the delay in disposal of rent suits. The delay was owing to a paucity of judicial officers and the increase of litigation. Since the appointment of Rent Munsiffs and increase in their number the ground of complaint has almost disappeared. The zemindars are now bitterly rueing the day they raised that clamour. I may here state that the proposed changes in the Law will not so much affect the large zemindars as the subordinate tenure-holders. The big zemindars like the Maharaja of Burdwan have let most of their estates in putnis and similar tenures and can punctually recover the rent. Their rent-roll is otherwise large enough to meet the Government demand even if rent is not punctually recovered. But the tenureholders who are generally middle class men feel and will feel yet more the difficulties if the Bill becomes Law. Yet neither the zemindars nor the tenureholders are much to blame for the extensive sub-infeudation in the country. The Legislature encouraged such sub-infeudation to the utmost of its power by such enactments as Sec. 2 Reg. V and Reg. XVIII of 1812, Reg. VIII of 1819 and finally by the special Registration Clauses in Act XI of 1859. From their limited means and small profits the holders of small under-tenures are scarcely able to do the duties of landlords. In seasons of drought or inundation, for instance, they can scarcely render material help to the ryots. It were better therefore for all parties concerned if they were bought out.

I can propose no better procedure for recovery of arrears, for any summary procedure like the certificate system is sometimes abused even in the hands of the Revenue authorities. Yet I do not approve the additional restraint put upon the powers of distraint. I know that the power is sometimes abused but whenever it is abused it is through the assistance of Courts. Assistance of Courts is invoked if there is an apprehension of resistance, and resistance is apprehended when there is a boundary dispute or

some other source of dispute. Courts have so much to do that they can seldom shift the matter to the bottom in the *exparte* enquiry held in the matter. Whenever Courts withhold assistance, the fear of an affray deters the landlords from attempting to distrain the crops in cases of dispute. I do not remember to have found instances of distraint made without assistance from Courts giving rise to other suits or proceedings. But instead of improving the existing law as to the enquiry to be made before assistance is given, the Bill makes an application to Court and an *exparte* enquiry necessary in every instance and requires the payment of full Court-fees of a suit. Now this is virtual abolition of the power of distraint, for who would pay the full court-fees for a mere application for distraint for only the current arrears when the order passed thereon would not have the force of a decree enforcible against the person and other properties in case the crops do not suffice, and when a regular suit for arrears in which nearly four years' rent may be claimed and an attachment of the crops before judgment, would be a far better course? We therefore see that so far as the recovery of arrears is concerned no new advantages are or can be held out to the landlords, and some of the present advantages are going to be taken away, for, fear of unfettered distraint insures punctual payment of rent.

The only advantage held out is a future table of rates and produce as a possible means of affording facilities for a slight enhancement of rent, in a few cases and that at an interval of ten years at the least. So that as a measure of compromise too, the Bill is not very tempting to the landholders. This may be perceived from the outcry they have raised against it going to the length of denying the very necessity of any change in the existing law, very like the begger who in his dismay cried out "call back your dog I don't want your alms."

I know there was a time when landlords as a class were very oppressive. But so far as Bengal proper is concerned those days are almost gone by and since the indigo disturbance, in the words

of the poet "the hydra-headed monster" has been roused and the tables have been completely turned. That disturbance being indiscriminately encourged, instead of producing any improvement in the system utterly ruined the industry and one important avenue for influx of capital into the country. How many a native family is ruined along with each indigo factory? I know many a poet sung in pathetic verses, many a newspaper writer wrote in vivid lines the pitiable condition of the then indigo ryots, and a noble missionary suffered myrtredom in their cause. But having been four years the Munsiff of Kusteah in Nuddea (one of the centres of that disturbance) I also know those very ryots now rue the day that carried them to the other extreme and ruined the industry altogether. The zemindars are apprehending some such fate, and I am really sorry to find that some of my young countrymen, not a few of whom perhaps owe their very education to the generosity of some zemindars, have declared a crusade against them. Wealth in order to be of social use must be concentrated in a few hands provided the holders of the national capital be brought to consider themselves as trustees for the nation. Our policy should, therefore, be not to hamper but to improve the class by education and public opinion. Already we see signs of improvement and public spirit among the class. Bengal though physically the weakest has yet become the richest and most important of British Provinces. It has the largest number of colleges, schools, dispensaries and hospitals. And why so? Because it was blessed with the now much-abused Permanent Settlement, keeping the surplus national wealth in the country, and concentrating it in a few large families. What do we not expect if these men of leisure can be induced to devote their time and means to the cultivation of arts, sciences and literature and extension of industries. But that day is not far away. How many a people and how many a charitable institution are maintained by them? I may state in short that it is impossible to create peasant proprietors here to any extent of real usefulness so long as the

zemindars are not entirely bought off and the whole property in land is not redistributed among the peasantry. I know that some of the landlolders are yet oppressive and it is these black sheep that have brought odium on the whole class. It were better if these men were warned of their conduct by executive mandates or otherwise restrained by more effectual measures as Sir George Campbell once meditated doing; though subsequently he found that imposition of abwabs was a matter of compromise between the landlords and ryots and more advantageous to the latter than the regular enhancement of the *assul* rent through the inevitable previous litigations. These abwabs not being shown in the dakhilas the ryots can avoid paying them at any time they like and can always avoid paying them to a new purchaser. Imposition of abwabs was a mode of enhancement adopted and acquiesced in from the latter days of the Mahomedan rule, and notwithstanding the very stringent laws prohibiting its further imposition, the vicious system could not be abolished. That shows that if a law is passed against the grain of a people it is sure to be broken. But as I say, pass the most stringent law against those oppressors but do not pass a law against the interests of the whole class which contains also such noble members as the illustrious and ever memorable Maharani Surnomoyi of Cossimbazar, and the mildest of landlords-Maharaja Norendro Krishna Bahadoor.

Much good is no doubt expected from the proposed legislation. The framers of Act X of 1859 expected no less. But alas for human sagacity—what is the result? So we ought not to be so sanguine about the beneficial results of the Bill in its present form.

Another feature of the Bill is that it gives exclusive jurisdiction to the Revenue Authorities in some of the most important matters. Act X of 1859 gave jurisdiction exclusively to the Revenue Courts in all matters. Act VIII of 1869 B. C. on the contrary transferred the said jurisdiction bodily to the Civil Courts and now it is proposed to divide the jurisdiction half and half

between the two classes of tribunals. There is no doubt that the class of enquiries to be made over to the Revenue Authorities can be better conducted by them than by the Civil Courts. Yet one difficulty the people feel before the Revenue Authorities is that, they do not obtain that full scope for discussion of a point as before the Civil Courts. Further they labour under the impression that the views of the Revenue Authorities sometimes change with the change of Government. It would, therefore, be better if the decisions of those authorities were *prima facie* and not conclusive evidence of a matter.

Chapter I., Section 4—Contracts should also be saved as customs.

Chapter II.—The provisions are good as the proprietors have no right to extend the area of khamar and nijjote lands and thus curtail the area for the growth of occupancy right even under the present Law. Section 20 is not in keeping with the spirit of the Bill.

Chapter III.—There ought to be a section for forfeiture of a non-transferable tenure if transferred.

It would be a great boon to the zemindars if all transferable tenures were declared liable to summary sale like putnis on an application to the sub-divisional Deputty Collectors.

Similarly it would be a great relief to some of the unfortunate tenureholders if they had the option of insisting upon the sale of the tenures for arrears in the first instance, for in case the tenure happens to be an unprofitable one the landlord proceeds against the person and other properties of the tenant instead of the tenure itself and ultimately ruins him, as he has not the option of relinquishment as the ryots have. If he had the option of relinquishing a tenure it would answer the purpose equally well. I speak this from my experience in Backergunge.

Chapter V.—Sections 45, 47, 49 are quite opposed to the terms of the Permanent Settlement as it seems to me. Section 49 will no doubt confer right of occupancy on a large

number of ryots, namely, all the settled ryots of Sec. 45 in Behar even if they have held the lands for a year only, but will as surely prevent them from getting 'one' *chhutak* of additional land in future both in Behar and Bengal without paying a heavy *selami* so long as a non-settled ryot may be had to take it up.

Section 50.—I have already dwelt upon several of its provisions.

Clause (*e*)—May be injurious to the ryots as we see from the *zemba* system of Backergunge. Though it is now too late to prevent subletting it ought not to have legislative sanction except in cases where the ryots are minors, invalids, lunatics, females, and the like.

Section 51.—One month's time is too short.

Section 52.—The landlord may not know the impending sale. There ought to be provision for a notice to the landlord in all cases of intended sale in execution of decrees held by third parties as provided in cases of private sales.

Section 53.—One month's time is too short a time as there are many absentee landlords whose local agents must take their permission for the purpose.

Section 54.—One month's time too short.

We see that in making the right of occupancy transferable the present privilege of relinquishment, which would be inconsistent with it, has been taken away. But nevertheless a large number of ryots, occupant or non-occupant, yearly find it convenient to relinquish their jotes. Henceforth such ryots shall continue liable for rent as long as the landlord chooses, though they may cease to hold the jotes or find them unprofitable. At all events, henceforth, they will have to pay a heavy sum if they wish to relinquish their lands as no purchaser will be found for such jotes.

Chapter VI.—No procedure has been yet laid down as to how the Revenue officer is to determine whether the ryot in any particular instance of lease acted as a free agent, and whether the

stipulated rent exceeds one-fifth of the estimated average annual value of the gross produce of the land in staple crops calculated at the price at which ryots sell at harvest time; for if there is competition for land the ryots will agree to the terms offered by the landlord and if he comes to register the lease at all in ninety-nine cases out of hundred he will admit all that is stipulated in the lease as correct if he does not wish to go without the land, as we find in cases of registered bonds at exorbitant rates of interest. If there be again a counter combination among the landlords in these days of combinations the matter will be still worse. The provisions can not at all events come into operation until the expensive and laborious tables of rates and produce are prepared.

Section 60.—Here the law contemplates giving the occupancy ryots a right to the accretions to their holdings by alluvion contrary to the provisions of Sec. 4 Reg. XI of 1825.

Section 63 Clause (*c*.)—To take price account at the hardest time alone would be unjust to the landlords. There should be an average price taken.

Section 66.—No provision against difference of opinion amongst assessors.

Section 70.—The minimum of 10 years and maximum of 30 years are too long periods.

Section 72.—The tables may ultimately be of no use to either the ryots or the proprietors and yet the expenses are to be borne by both.

Section 74 Clause (2).—So the landlord is to be bound by his contract though the ryot is not to be so.

Section 78.—Ten years too long a period.

Section 81 Clause (*b*).—Why so when some crops exhaust the land more than others ?

Section 82.—This appears to be contrary to the teaching of the *Statesman* in several of its articles on Deccan Agricultural Relief Act that the greatest blunder ever committed by the settlement

officers was to have fixed the rent in money and not in kind, thus forcing the ryots to sell the produce at a time when the market is glutted with it, namely, just after the harvest time.

Section 83.—The price list would be of great value indeed.

Chapter VII.—These provisions are good and just. They should be extended to all Bastu or dwelling-house land in town or village, but the existing contracts should be respected. The provisions are in keeping with the equitable principle of "stand by."

Chapter VIII, Section 93 Clause 2, Sub-Clauses (*a*) and (*b*).—Compensation for improvements may be allowable where a ryot is not bound to make them by the terms of his lease as a ryot is not *perse* under any obligation to make them. But compensation for disturbance cannot be allowed as disturbance follows from the nature of his tenure which he accepted with full knowledge thereof and from his latches.

I may here state that compensation for improvement may be allowed to occupancy ryots if they remain subject to eviction as now for non-payment of rent,

Chapter IX Section 98.—This will seriously affect the existing arrangements and will be very injurious to the tenureholders who are in many cases bound by their contracts to pay rent to their lessors by even monthly instalments. If contracts are to be set aside, Sections 97 and 98 should be amalgamated into one and the same rule should be laid down as to instalments whether payable by a ryot sub-ryat or tenureholder.

Section 103.—The sanction of verification should not be taken away. the ground (*a*) being too broad and indefinite.

Section 109.—If damages are to be allowed in order to induce other ryots to be prompt in paying their rents, they lose much of their effect if they are to be awarded in lieu of interest which is a simple compensation for the delay, and is not intended for, and has not the effect, of a punishment. The present law does not make it a subtitute for interest, though it has been so interpreted in some old rulings. The counter provision for awarding damages

against the plaintiff (landlord) for vexatious suits in the present law or Sec. 110 of the Bill is not a substitute for interest but is intended purely as a deterrent.

Section 119.—This Section seems to do away with the Borga or Adhibhag system. If not the system should be expressly preserved as merely a labour contract.

Chapter XI Section 155.—The matter should not be left entirely to the discretion of the Revenue officers.

Section 159 Clause (2).—The local Government is too inaccessible a tribunal.

Chapter XII.—Preparation of records of rights is a good idea and such a record if properly prepared will confer a real boon on the country.

Chapter XIII.—I have already commented upon the proposed curtailment of the power of distraint.

I would leave the provisions of the present law on the subject as they are and suggest only one improvement, namely, that when a landlord asks for assistance of the Court, there should be a regular enquiry after a short notice to the ryot, restraining him and others if necessary from reaping the produce in the meantime. The ryots should also be allowed to object to distraint immediately after they receive a notice from the landlord or an attempt to distrain is made.

Chapter X heading E.—There seems to be an omission as to how the present co-owners of estates and tenures, receiving rent jointly are to sue for arrears in case all of them do not agree to sue jointly in collusion with ryots. Certain decisions have laid it down that in such cases one co-owner may sue for the whole amount of arrears making his co-sharers parties as co-plaintiffs. But provisions under this heading seem to lay down that in every such case a manager is to be appointed or a partition to be forced. Now both these courses are expensive affairs and it will be in the power of a big co-sharer to force the minor ones to appoint him their manager or to bear the expenses of

a manager appointed by the District Judge and thus ultimately to part with their shares most likely in his favour. They may well afford collecting their own share of rent if the ryots consent to pay them that share separately. The joint Hindu family system makes co-sharers unavoidable and it is also well known what bitter enemies they at times are. The minor co-sharers are sure to go to the wall if they were not allowed to sue for whole arrears as at present. The omission on this point is liable to the misinterpretation of a covert attempt to aim a blow at joint Hindu family system so fostered by Reg. XI of 1793. The zemindars would fain have a law of primogeniture, but the courts are dead against it. See the celebrated case of Tagore *vs.* Tagore.

Chapter XV Sections 211 and 212.—To avoid delay both kinds of sale should be simultaneously advertized and held one after the other on the same day.

Chapter XVI Section 225.—I don't see the justice of this provision. Are ryots objects of more care and compassion than minors and lunatics ?

I will conclude this paper with a few observations on the relation of Bhuswami and Praja or landlord and tenant as it existed before and as it is at present. The Hindu idea of Praja is not fully expressed by the English word tenant at all. It comes from the root Jan (gen) to be born and the original meaning was issue, child. Tenants thus stood in the relation of children to their landlords.

Accordingly whenever a Hindu performs the ceremony of shradh he first offers funeral cakes to the manes of the ancestors of his landlord (Bhuswami Petris) along with the Lord of Jagnas (Jogneshwara) and the Lord of the Household deities (Vastu Purusha) before he gives any to his own ancestors and thus literally performs the spiritual duties of a son to his landlord. The duties of affording protection and giving advice in difficulties on the part of the landlord and those of obedience to and support of the land-

lord with a share of the produce of the land on the part of the Praja necessarily followed from that Root idea.

Here I must observe that a Bhuswami was not necessarily the king or raja designated by the word Bhupati. The word *swami* in the compound word Bhuswami comes from the word *swa* meaning own or one's own conveying the idea of owership, property, while *pati* in Bhupati means Protector, the ward Bhu or earth or land being common to both. The word Bhuswami therefore means the owner or proprietor of land, while Bhupati means the king, the sovereign, and has many synonyms such as Nripati (protector of men) Raja the glorious, or the Majestic) and the like which have no reference to land at all. It may be that in many places originally the Bhupati was also the Bhuswami, when he collected the Nripansa or Raj-kara (king's share of the produce or rent) directly from the Praja. But when extensive Kingdoms or Empires arose upon the conquest of several petty Rajas by one more powerful than the rest (which must have been the case even so early as in the time of the Maha Bharata) the petty Rajas were reduced to the position of Bhuswami or zemindars. It was inconsistent with Hindu Nature, Religion, and Polity to deprive the unfortunate conquered Rajas of all connection with the land and the people, nor was it possibe, in the absence of the modern fiscal machinery, to collect rent or revenue directly from the Praja in so extensive territories. In the absence of any large number of law courts it was necessary to leave them almost all the sovereign powers of the absolute type to enforce collection of rent with any degree of punctuality and the conservative habits of the nation tending to make every thing hereditary, would naturally leave such powers to those old families hitherto accustomed to use them. When Kingdoms or Empires of extensive territories were raised they gave scope to Royal grants also. In these two ways, as I conceive, arose the Bhuswami or the zemindar class, a class whom even the Mahomedan Kings and Emperors found it impolitic or impossible to extinguish or useful to retain.

Hence it was that even at the time of the Permanent Settlement the zemindars and independent talookdars were found enjoying semi-regal powers and privileges of which they were deprived by it. The Praja, however offered the first shrad cakes to the manes of the ancestors not of the sovereigns who often were not Hindus but of the immediate semi-sovereigns the Bhuswamis, who were, down to a very late period, almost universally Hindus. During the Mahomedan time, some Hindu Bhuswamis were converted into Islamism and other Mahomedan zemindars were created by Royal grants. In such cases the performers of shrad were placed in an anomalous state of things and therefore in those places the priests substituted the sacred River Ganga for the manes of the ancestors of the Bhuswamis for purposes of the shrad ceremony. When, however, shradh cakes were offered to the manes of kings it was done so in their character of Bhuswamis and not Bhupatis. Again as Bhupatis, they were objects of almost divine honors for in Bhagabat Gita Sri Krishna declared that every thing great and good on earth was part of himself and said that among other things great he was Naradhipa or King amongst the Naras or men. When therefore Hindu Bhupatis were reduced to the state of Bhuswamis only, the people still continued to regard them in that light from habit and custom. On the other hand Bhupatis or Bhuswamis would not even look at a Praja's field grown with corn lest it should be accursed *i. e.*, lest it should excite their cupidity and tempt them to raise their dues, a custom which is yet observed in form though not in spirit. Such was the sacred nature of the relation between Bhuswamis and Prajas calculated every way to maintain peace, harmony and good will between them till foreign conquest gradually sapped its foundations. Even the best of the said conquerors the celebrated Akbar raised the king's due from one-sixth enjoined as the limit by Menu to one-third as the ordinary rate and that not on the staple crop which would require no actual survey, but according to the nature of the crop requiring the very things the Bhuswamis and Bhupatis

were prohibited to do, namely occular inspection of fields with crops. The British Government also adopted that mode of assessment. The revenue being thus periodically varied and being in majority of instances enhanced, the zemindars were compelled to raise rent and thus gradually mistrust and jealousy were created requiring the passing of such enactments as Reg. VII of 1799, Reg. V of 1812 and so forth. The stringent sale laws made the matter still worse. The assessment at ten-eleventh was extremely heavy, the pains and penalties provided against imposition of fresh Abwabs were yet too fresh to be disregarded. There could be no enhancement of rent beyond the Purgunna rate as fixed at the time of the Decennial Settlement so far as the majority of the ryots were concerned, during at least the first ten years of that settlement, and there could be no perceptible increase of the value of the produce in those days of sparse and almost stationery population to lead to enhancement on that score.

The customary and sanctioned mode of enhancement by actual measurement and survey of areas and crops was out of the question within so short a time after the one which took place just before Decennial Settlement.

Mr. Field in his Digest complains that the zemindars did not usually proceed to enhancement that way but resorted to the illegal mode of imposing abwabs. But here it is forgotten that measurement and survey were against the interest of every body concerned, and ryots, talookdars, Lakhirajdars, holders of chakran land, and in short every body interested in land would resist it if he possibly could, as we find even this day in case of every attempt on the part of zemindars to measure their zemindaries. The secret lay in the fact that an immense quantity of land lying fallow or unoccupied every holder of land encroached upon it and this was inevitably to be discovered if a measurement were to take place. The zemindars considered it expensive and troublesome in itself, and irksome and alarming to the whole tenantry, and therefore refrained from it on their agreeing to pay a small increase after

some name. This small rate, however, was not allowed to be incorporated with the *assul* or fixed jumma or to appear in any record so as to be claimable by the zemindar's successors. Such was the origin of abwabs if abwab it may be called and it came in vogue gradually after 1799 when a large number of the settlement zemindars had been sold out. *Vide* the Preamble to Reg. VII of 1799.

These sales brought in a new class of men—men who had neither the family traditions to care for nor inherited princely instincts to restrain them from oppressive conduct—men whose only interest was to make the best of their bargains. On the other hand the tenants too had not that respect for these men either from tradition instinct or injuctions of shastras especially when they were not Hindus.

Nevertheless this class of men has the best of titles in the eye of law and equity. They purchased the estates on the faith of the Regulations with their hard-earned money and did not inherit them from their ancestors or get them as free gifts from the Government as the settlement zemindars. The provisions of the successive sale laws encouraged them to purchase the estates as the revenue sale professed to give them the estates in the same state as they were at the time of the Permanent Settlement. Moreover these men were generally capitalists and it was through their exertions and with their capital that the country was cleared of the jungle and cultivation extended. As time rolled on these men also came to be regarded with the same honour as the ancient landed aristocracy and though they were more exacting at first their successors assumed the airs of the old nobility and ceased to be so.

But neither the old nor the new class of zemindars had hitherto any ambition or scope for useful life. The consequence was that some of them fell into the vices bred in idleness and gradually became careless about the management of their estates, and were ultimately involved in debts. Thus they were obliged to let their

estates in Putni and to raise money that way, and the Government encouraged them to do so by enacting special Laws for the purpose as has been shown before. Thus a new class of men with very limited means came into the scone and added to the difficulties of the situation. These men again sublet their tenures in Durputni and so forth and made the matter still worse. Indigo-planters took up many of those sub-tenures and temporary ijarah leases on payment of large *bonus* to facilitate indigo cultivation by obtaining a hold on the ryot. It is too well known to be repeated here that the system of cultivation as followed in Bengal involved great oppression and hardship to the ryots. They revolted against the system at about the time when unfortunately Act X of 1859 came into operation. In order to coerce the ryots into submission these foreign planters set the Act into motion and rent-suits flooded the Revenue Courts whose number had to be largely increased. The main features of the Act were as follows :—

(1.) By its restrospective effect the Act conferred a right of occupancy upon a majority of the ryots resident and non-resident.

(2.) Hence there could be no ejectment without a decree of Court for arrears of rent ordering such ejectment.

(3.) All amicable enhancement or even adjustment of rent was therefore practically hopeless.

(4.) The principal ground of enhancement, namely, increase of the productive powers of land or of the value of the produce was practically useless (see the case of Thakurani Dasi.)

(5.) Nor could the land be let to new ryots who would offer to pay a higher rate of rent.

(6.) Landlords were prohibited to even compel the attendance of ryots.

(7.) The pains and penalties attached to imposition of any additional rate not incorporated with the jumma looking like an abwab which were hitherto lying slumbering in

old Regulations not accessible to all, were stereotyped and revivified in a codified law accessible to all.

The ryots at first resisted the foreign and unsympathetic landlords the planters, on account of the rancour engendered by indigo oppression; but gradually as experience was gathered, they found out all those effects of the Act. The ryots of the country-landlords also caught the infection, the whole country was ablaze and all amicable adjustment of rent was a thing of the past. But increase of population, foreign exportation, and repeated scarcities had unprecedently increased the value of the produce exclusively benefiting the growers *i. e.*, the ryots, while the general rise of prices injuriously affected the pockets of all men having fixed income under which class the landlord also came under the peculiar circumstances.

The landlord being disgusted with the working of the tantalizing provisions of the law on enhacement, were obliged to resort to other means to compel the ryots to come to terms and agree to pay a higher rate of rent. And what was that means? It was simply a resort to other provisions of the law, namely, simple rent-suits for arrears with interest and damages at the end of each kist or instalment and thus to harass the ryots who had to pay those and costs besides. Often a little increased rent was claimed in those suits so that the ryots might not let the cases go *exparte* and might feel all the bitterness of dancing attendance in Courts even in seasons of cultivation and harvest. This was again a course in which a man with a long purse alone could ultimately succeed, for it must be constantly repeated before success could be attained. The petty zemindars and tenure-holders who attempted it burnt their own fingers, for the ryots combined, raised a Defence Fund amongst themselves and resisted them to the last. Those who wanted to proceed in the legal way were also resisted by the ryots who had learnt the value of combinations in the indigo-disturbance, for attempted measurements of estates often lead to affrays, riots and even murder.

Thus the only persons who really profited by the extraordinary rise of prices were the muktears and lawyers whose number in consequence increased beyond the ordinary needs of the country. It was thus, if I am correct in the foregoing historical sketch, that the once sacred, confidential and mutually beneficial, relation or Bhuswami and Praja was lacerated and turned into one of bitter animosity and hatred. If the parties were let alone as before the passing of Act X of 1859 self-interest if not a higher motive would have peaceably settled the Rent Question given rise to principally by the rise of prices since the Mutiny. The landlords would have been satisfied with a little increase either in the shape of an abwab or an increment in the jumma itself, as heretofore; the ryots would have found it impossible to resist that demand in the face of the keen competition for land if they did not wish to be summarily turned out from their holdings and all the profits would have been exclusively enjoyed by the persons interested in land in due proportions determined by natural laws.

In my humble opinion that little section of the law namely Section 6 of Act X worked all this mischief.

Any fresh legislation in the same line with further curtailment of landlords' powers and privileges would in my most humble judgment lead to further embarassment of that rich and influential class who will not fail to find out loop holes in any law however carefully worded, with the assistance of lawyers of the present transcendental legal acumen.

The only remedy for this artificially aggravated disease is a moral one which it is not the place here to dwell upon, nor have I at present leasure enough to do it.

STRIKE BUT HEAR.

TREATISE ON THE RENT QUESTION

IN

BENGAL.

BY

KESHUB CHUNDER ACHARYA

ZEMINDAR

Mymensing.

The Oriental Press, Bhowanipore.

1884.

Perhaps Chapter V. of the Bill is intended as a punishment for the Zemindars of Behar who, it seems, have committed the unpardonable crime of protecting their own interests by not allowing a new right of occupancy to spring up on land and in persons other than those protected by the Code of 1793. Our rulers might have as well made a law prohibiting all the Banks of India to sue their debtors within the prescribed period of limitation, for it weighs very hard against the poor debtors to be thus sued and sold off in auction for the realization of money borrowed by them. I admit I have put an extreme case, but the principle is the same. If the zemindars can be blamed for not allowing a right of occupancy to spring up on their lands, bankers can then be equally blamed for not allowing their numerous bonds to be barred by limitation. In both the cases no just reason can be assigned for such legislative interference, except the sentimentality of our Rulers. Has the Government enquired whether the present mode of letting lands by short term leases and of not keeping the same lands under the same ryot for a period sufficient to create the right of occupancy, was introduced in Behar since the passing of Act X. of 1859, or from a time long before that period? I think if the ryots of Behar were resident ryots in the same sense as the Bengal ryots occupied the identical plots of land for years and sometimes for generations, the Behar landlords could not have introduced a new system so easily and rendered it universal within the last twenty years. When we look to the vast number of men, women and children that annually emigrate to Assam, it is not unreasonable to suppose that the Behar ryots have not the same attachment for their hearth and home as the Bengal ryots have. I need not dwell any more on the subject; I leave it to the Zemindars of Behar to defend their own cause. About $\frac{1}{3}$ of the lands in

Patna and Gya Districts are cultivated by opium. Government is yearly increasing the price of opium, of course with best of motives *i. e.*, simply to deter people from opium eating. Cannot the cultivators expect a little increase in the price they receive from Government?

Now let me proceed to consider the injurious effects of this Chapter (V) as far as Bengal proper is concerned. I would ask my readers to consider Chapter V of the Bill and they will be able to see how it would affect the Zemindar in the cases put below by way of illustration.

I. A, B and C have a village called Rampore appertaining to three different estates but included within the same exterior boundary of the Survey map. Shaik Tamiz lived for 8 years in that part of the village which belongs to A and had 4 Cottahs of land only, and for another 3 years and odd months, held 4 Cottahs in B's village. In July 1883, without changing his residence, takes 3 years lease for 30 Bighas of land from C, which were before under the cultivation of different resident ryots but Master Tamiz on the 3rd of March 1883 gets a right of occupancy over that land to the exclusion of the resident ryots, and poor C for no fault of his own is deprived of the possessory right of these 30 Biggahs of lands.

II. A, B, C and D had their *Z*emindaree partitioned in 1854. Shaik Tamiz held 2 Cottahs of land under A in village Rampore, in 1860 removes his *Baree* to Shampore some forty miles from the first village and takes 3 Cottahs of land from B and then in 1882 he again removes his *Baree* (house) to Krishnapore some thirty miles north of Shampore and erects a hut there in the Zemindary of C. In Pous 1882 some of the old resident ryots of Jadubpore belonging to D gave up about 30 Biggahs of land which Shaik Tamiz takes on a terminable lease of 2 years but on the 2nd of March 1883 he becomes an occupancy ryot with all the advantages conferred on that

favoured class of tenants; so without even an warning D is deprived of the 30 Biggahs of land and the resident ryots also lose their lands for ever. I think it is needless to multiply instances showing the injustice of the rule contained in Chapter V of the Bill. According to the common law of the Zemindars, lands wanted by resident ryots can not be given to or retained by, non-resident ryots. Such is the effect of Chapter V that persons who were squatters according to their own conduct, will suddenly acquire a right which could only be acquired by grant or prescription. A very high officer observed "as soon as this Bill becomes law the Zemindars will lose every bit of their cultivated lands." According to the provisions of the present Bill, lands given to Shaik Tamiz on the 1st of March will become, notwithstanding any contract to the contrary, his absolute property on the 3rd day of March 1883. I do not see the justice of the rule according to which a settled ryot shall, notwithstanding any contract to the contrary, acquire a right of occupancy over every plot of land found in his possession on the 3rd of March 1883 (*vide* Section 45 and 47). Our rulers tell us that they simply want to restore the ryots to their former position. Admitting for arguments' sake that *Khoodkust* ryots of old, acquired right of occupancy over land as soon as they cultivated them, may I ask whether any instance can be shown in which a Pycust ryot even claimed any such right? The distinction between the Khoodkust and Pycust ryots depended on whether the ryot resided in his own holding or not. If the Bill aims at the restoration of the former state of affairs, then why it takes away the distinction between the two classes of ryots which has all along been observed in Bengal? Pycust ryots had to give up their lands for the benefit of the Khoodkust ryots and new resident ryots, who wanted lands for cultivation; in fact Pycust ryots held lands at the mercy of the resident ryots, whether old or new, and they had to give up their lands when Zemindars required them for new ryots; and nobody can

deny that this was the common law of Bengal prior to the passing of the Act X of 1859. Unless Lord Ripon means to confer to the ryots some rights which the peasantry of Bengal may have enjoyed some thousands of years ago, I do not think the ryots would be benefitted if they are restored to what were their actual effective and recognized rights in 1793, and in the preceding 700 or 800 years. Lord Ripon is of opinion that the rights of the Bengal peasantry have been gradually curtailed since the Permanent Settlement. But what are the facts which led his Lordship to come to this conclusion, we are really at a loss to understand. Can it be supposed for a moment that at a time when the Mogul Government had lost all its prestige and power, when every powerful man who could collect a few hundred men, aspired to create an independent Raj for himself, when Houses like Burdwan, Nattore and Dinajpore openly defied the puppet Nizam of Bengal, when the pettiest land-holder exercised the powers of an autocrat, the ryots of Bengal had greater rights than they possess now under the all powerful British rule!!! I have every reason to believe that the privileges given to the *Khoodkust* ryots by the Code of 1793, at any rate the provisions regarding the Pergunnah rate were entirely new and were legalized for the benefit of the ryots who were found residing in their holdings from a time long before the Permanent settlement.

CHAPTER II.

Khoodkust Ryots.

It may be safely asserted that up to 1845 the Courts and the people of Bengal were equally ignorant of any right of occupancy except that recognized by the Revenue Sale law of the Act I of 1845, as existing in the *Khoodkust* ryots, who having held by themselves and their ancestors from before the Permanent settlement were in 1845 also called *Kudim* or

old ryots, and whose pattahs were not to be cancelled by the Zemindar except where they paid less than the Purgunnah rate, or when the pattah had been improperly obtained. Since the Permanent settlement, some other ryots also obtained a right of occupancy by prescription and sometimes by the application of the doctrine of acquiescence; as for instance, when Zemindars allowed the ryots to dig tanks and plant valuable orchards. But this right was not judicially recognized until 1845. Before 1859, a ryot whether *Kudim Khoodkust* or modern *Khoodkust* had a right of occupancy only over the land which he acquired from the Zemindar along with his *Bastu lands i. e.* when the ryot first settled in the village, and this right Zemindars considered themselves morally bound to allow to the ryots on the ground that the said lands were given to them as an inducement for changing their homesteads, but the right of occupancy which accrued to modern *Khoodkust* ryots depended upon their paying the rent demanded by the Zemindar. They could not be ousted from their lands if they agreed to pay the rent demanded of them, they could not acquire a right of occupancy over lands subsequently acquired by them. As to these lands they were looked upon as *Pycust* ryots, and had to give up those lands for the benefit of the new settlers and other necessary purposes of the Zemindar. These distinctions were legally taken away by Act X of 1859, and 12 years right of occupancy was created, according to this rule of the law, a ryot acquired right of occupancy by holding the same land for 12 years. But I do not think any one has ever heard of such a right of occupancy as contemplated by the new Tenancy Bill. According to the framers of the Bill every settled ryot of a village or estate, as defined in Section 45 shall acquire right of occupancy over every bit of land held by him after the 2nd day of March, 1883. A and B two brothers had a big Purgunah situated in Dacca and Mymensing. A and B partitioned the Purgunah in 1854, (see Section 43). A obtained that part of

the Purganah which is situated in Dacca, and B obtained the portion appertaining to Mymensing. Shaik Tamiz held a cottah of land since 1854 in A's Zemindary. On the 3rd of February 1883 he takes a lease for 100 Biggahs of land in B's Zemindary, with this express stipulation that in March 1884, he shall give up the land so acquired by him, but on the 3rd March 1883 he acquires a right of occupancy over that 100 Biggahs of land. Thus it will be seen that our rulers by a stroke of their pen, without even an warning, deprived B and his resident ryots from the use and occupation of 100 Biggahs of land for ever and Shaik Tamiz without spending a cowrie for the improvement of the said lands and being a squatter, according to his own showing, suddenly becomes a land-holder and not only this, Shaik Tamiz and his descendants, notwithstanding any contract to the contrary, will acquire a right of occupancy over every bit of land which may be found in his possession since the 3rd of March 1883, till doomsday. Shaik Tamiz will acquire a right of occupancy over lands held by him even for a day; for Section 47 does not prescribe any definite period for the acquisition of the right of occupancy for the settled ryots; so they will, after the 3rd of March 1883, acquire right of occupancy over lands as soon as they enter into them as ryots. It will be seen that this Chapter of the Bill will injure the very class of ryots, viz, real *Khoodkust,* for whose benefit it is sought to be enacted, for at the expiration of the period of the lease these 100 Bigahs of land might have been divided between the resident ryots of the village. Now Shaik Tamiz will live in the District of Dacca and sublet these 100 Bigahs of land to those *Khoodkust* ryots at rack rents and after the expiration of the term of the lease he will be able to extort highest *Nuzur* by way of bonus for resettlement of those lands. Where lies the justice of this arbitrary distribution of private property, we are really at a loss to understand. Philanthropy is, indeed, a good thing so long as one's purse is not touched.

It will not be out of place to give here a short history of the right of occupancy as created by Act X of 1859. If we search the published Reports for over fifty years after the Code of 1793, no traces are to be found of the right of occupancy in any one but the *Khoodkusts* ryots of 1793.

The decisions from 1793 to 1845 show no vestige of any thing like a claim even by any tenant to any right in the land-owner's soil to be acquired by any inherent power of growth or extension, by long occupation, or by the law of limitation. On the other hand many of the cases are totally inconsistent with the possibility of any such right having accrued, grown, or extended since 1793. In 1823 a case was decided in the Sudder Court by Mr. C. Smith and his brother Judges who had begun their Indian career before or soon after the Code of 1793 came into operation, and to whom, therefore, the real sense and meaning of the policy of the Permanent settlement had come down as a familiar fact. They ruled that the fact of a tenant having held his land at the same low rent from 1785 to 1819 did not deprive the landlord to enhance the rent. (3 Sel. Rep. 221.)

It may safely be asserted that before the year 1845, the Courts and people of Bengal were equally ignorant of any right of occupancy except that recognized by the legislature in the Revenue sale law of the same year (Act I of 1845) as existing in the *Khoodkust* ryots who having held by themselves and their ancestors from before the Permanent settlement were, in 1845, also called *Kudim* or old ryots and whose Pottas were not to be cancelled by the Zemindar except when they paid less than the Purganah rate or when the Pottah had been improperly obtained.

In 1845 questions began to be raised in Sudder Court on the 12 years Law of limitation, both as to whether after taking the same rent for more than 12 years the landlord could raise it, and as to whether after a tenant had cultivated the same land for more than 12 years, his landlord could eject him. In 1859

Baboo Krishna Kissore Ghose late Senior Government Pleader of the High Court, whose character and long experience in the Sudder Court, gave the weight of authority to his words, is reported to have stated in the course of his arguments that this question of limitation as between landlord and tenant, where there was no adverse holding, was never mooted before 1845. The Judges of the Sudder Court from 1845 to 1856 were, however, more indulgent to the arguments in favor of the ryot and against the Zemindar. On the point of limitation, however, barring the right to raise the rent, the decisions were conflicting, but ultimately it was settled that limitation did not apply to raising of the rent.

As to eviction, the question first arose in cases where the Zemindar sued to evict his tenant from land held in excess of the area held under his lease. In 1846 the Sudder Court decided that 12 years law of limitation prevented such evictions after 12 years holding (S. D. D. 1846, P. 358.) This decision published in Sudder decisions was constantly quoted and ultimately amplified, till it led to the theory of 12 years holding giving a right of occupancy, subsequently enshrined in Act X of 1859. In 1849 two Sudder Judges out of three laid down the same doctrine under the same circumstances on the authority of the case decided in 1846. (S. D. D. 1849, p. 413). In 1856 it was finally held by the Sudder Court that the tenant may acquire a right of occupaucy by prescription.

Thus here for the first time, 53 years after the Permanent Settlement, we have the idea propounded that right of occupancy could have grown up, since the code of 1793, on land and in persons other than those protected by the terms of the code. In other words it was now decided for the first time that the remaining lands beyond that held by the protected ryots which by that code were given to the Zemindar "as actual proprietor of the soil and *to be let by him in whatever manner he may think proper*"

had, by the virtue of that very Code, passed out of his control and absolute disposal, by the stealthy growth of the right of occupancy. The theory seems to have been, that if a Zemindar might have raised his rent or might have evicted his tenant 12 years before and had been kind enough to content himself with the old rent and let the tenant stay on; he should be held to have debarred himself thereby from ever afterwards resorting to his undoubted right. It has become too much the fashion now to assert that the Code of 1793, creating the Permanent settlement, did not define the rights of the actual cultivators of the soil, and that the extent of their rights was left to be determined by the subsequent generations of officers. It is true that the Code of 1793 is wisely silent as to any theoretical and obsolete rights in the peasantry of Bengal, but it can be clearly seen that it deals with all the actual known rights then practically owned by them. In 1793 the Ryots of Bengal possessed lands under the name of either *Khoodkust* or *Pykust* Ryoti-tenure, and these facts were known to the framers of the Code and they did their best to protect these rights consistently with the recognized customs of the country. As to any other hidden rights of the Bengal peasants, a well-known writer on the rent questions, writes thus "what were the actual peasant rights "in Bengal both at the perpetual settlement and up to Act X? "This lies at the root of the subject, as being the natural develope- "ment of the existing progress of Society, and as such the "surest guides to our future legislation. The answer will also "enable us to meet the arguments of those who cannot deny "our abstract of the Code of 1793, and of the subsequent judicial "interpretation, but who resist the inevitable conclusion by saying "that some rights of occupancy have, notwithstanding, all along "existed and been claimed by the Bengal peasant, and that "therefore the mere silence of the Code of 1793, on the sub- "ject is not conclusive as to the rights of the peasantry. Comments "have also been made to the effect, that the Code of 1793, means,

"by the general term *Khoodkust*, any occupancy rights which "might afterwards be found to exist and which the despatch of the "Court of Directors of 29th September 1792 said "were not and "could not then be ascertained" and that the Code consequently "was so framed as to leave peasants' rights for future recognition, "when the Revenue Officer should be able to discover them. "It is also said that Permanent settlement of Bengal deprived "the Government of any further interest in the Bengal land "tenures, and that consequently the officials never made any "further enquiries as to the peasants' rights in Bengal. Such "undoubtedly has been the official theory of late years and "particularly since Holt Mackenzies' Act, as applied in the "North-Western Provinces, had led to the discovery and to the "record of peasant rights there.

"The inference therefore arose that similar peasant rights, "had all along existed in Bengal and that inference was, as we "have shown, first judicially recognized in 1856 and then "legislatively enacted by Act X of 1859. As this argument of "the hidden rights of Bengal peasants will no doubt bear strongly "on any alteration of Act X, we shall first of all consider "what degree of truth may underlie it.

"The first point, that naturally excites wonder is, that if "such rights really existed as then acknowledged facts, previous "to the Code of 1793, there should be any doubt about them. "If the French were to conquer England and Ireland and then "enquire as to our landed tenures, there could be no doubt that "they would immediately discover the rights of copyhold "tenants in England, and the tenant right of the North of Ireland. "But if philanthropists among them were to contend that "the land did not, of right, belong to the present English and "Irish land-lords, but to the peasantry, because the Saxon "Franklin had been deprived of his rights by the Norman con-"queror and because the Celtic landowner had been unjustly

ejected by Strongbow's followers, by the English of the "Pale, and by the crown grantees under the Tudors and the Stuarts, "no doubt the French would have much difficulty in ascertaining "whether these rights did or did not exist. They would, of course, "find plenty of claimants both in Ireland, and some parts of "England, who would loudly proclaim and in some cases even "prove their ancestors' proprietary holdings and who would be "discreetly silent as to the means by which those holdings or at "least the proprietary right therein, had passed to their present "land-lords. Some Cynic might perhaps object, that if the "rights claimed were more, or other than mere rights of property "which by one means or another had passed to the present land-"holders, these rights would at least have a name and some late "recognition in the public life of the people whose conquest has "just been effected, and that, if actually existing, there could be "no doubt about the fact and no difficulty in ascertaining it.

"Now this was exactly the case in Bengal before the perpetual "settlement. Mr. Grant and the other supporters of the peasants "right to be declared the landowners instead of the Zemindar, "set up the same antiquated claims on behalf of the Bengal "peasant. They were obliged to admit that, in the actual state "of things, as we found them, such rights were at least dormant "if not obsolete, but this of course was attributed to the usurpa-"tion of the Zemindars. The East India Company was urged "by them to act on claims of right, instead of on existing facts "and to declare the peasants of Bengal, the landowners, dis-"missing Zemindars, whom they called tax Collectors, with some "pecuniary compensation.

"A policy of the same kind was initiated in Oudh by Lord "Dalhousie on the annexation of that country, when "his officials began ripping up titles and taking the land "from its actual possessors, to restore it to claimants, alleging "that they or their ancestors had been wrongfully dispossessed·

"As the time of this change in Oudh was favorable to revolt, "the rebellion broke out there with the completeness and un- "animity, which we all remember, and was only stayed by "Lord Canning's proclamation of general confiscation, and by "the Oudh leaders being informed that this was merely a means "of the setting the proceedings of Lord Dalhousie's revenue "officers, aside, and of thus restoring the estate to the actual "possessors at the time of the annexation. Since this had been "carried out and the country has been remade into large land- "lord estates, Oudh has not only been peaceful, but is one of the "most rapidly progressive of our Indian Provinces.

"But Lord Cornwallis, backed by Lord Teignmauth, then "Mr. Shore, and by his other eminent followers, was too wise to "act on antiquated claims instead of on existing facts, and "therefore he made the zemindars, landowners instead of the "peasants, while at the same time we recognized such rights in "the peasantry as had an actual existence and a name. Altho' "the Court of Directors in deciding between the supporters of "peasantry and the supporters of the zemindars as landowners, "might say that the rights of the ryots were not and could not "then be ascertained, there is no reason to believe that Lord "Cornwalis and his supporters had any doubts as to their "then existing rights, whatever opinion might be entertained as "to the former rights of which they had been deprived during "the 800 years of the Mussulman conquest. The existing rights "then claimed were all comprised under the two heads of "Khoodkust and Pykust ryot, and till Act X. of 1859, neither ryot "nor Zemindar in Bengal knew of any other ryoti tenure than "some form of one or other of these two genuine terms. Till "the Perpetual Settlement, the officials in Bengal performed for "Government much the same duties as the Dewan or Head "Steward now does for the Zemindar landowner and to them "those terms, with all the incidents attaching thereto must have "been much more familiar than they could possibly be to the later

" officials who only dealt with the Zemindar and the expression of
" whose ignorance culminated in the doctrine that a Khoodkust
" Ryot's tenure grow.

" Our contention is not as to what may have been or what
" probably were the rights of the peasantry 800 years ago, but as
" to what were their actual, effective and recognized rights in 1793.
" We contend that, although the Code of 1793 is wisely silent
" as to any theoretical and obsolete rights in the peasantry of
" Bengal then set up for them by Mr. Grant and his supporters,
it deals with all the actual, known rights then practically owned
" by them. These were known by the framers of the Code
" of 1793, as well as by the whole native population of Bengal,
" only as some form of either Khoodkust or Pikust Ryoti-tenure.
" The various forms of local holding bore many names and
" differed in many respects, but whether each of such forms
" came under the head Khoodkust or Pykust Ryot depended
" on certain invariable attributes and carried with it certain
" acknowledged rights. The distinction depended on whether
" the Ryot resided on his holding or not. The land-lord's object
" was to get permanent tenants on whose continued cultivation
" he could rely, and whose attachment to their homes would
" prevent their deserting his property, whenever his increasing
" demands, based on the increasing prosperity and abundance
" of money in the neighbourhood, gave them an opportunity
" of getting better terms elsewhere. There was also the
" collateral object of, by this means, getting even at first a some-
" what higher rent in the aggregate, for the rent charged on
" the portion of the holding occupied as *Bastoo* or Homestead
" was always higher per acre than the cultivation rent of the
" other portions of the land. To obtain the security of permanent
" cultivation by permanent residence, the custom had grown
" up of granting to such resident cultivator an indefeasible right
" to his holding so long as he paid the stipulated rents and
" continued to reside personally on his holding. This was the

"Khoodkust Ryoti tenure where the advantage of fixity to the "peasant was made to correspond with the land-lord's security "by the tenant's continued residence and cultivation, and to cease "with the tenant's removal. Under this tenure the peasant had "no power of under-letting or otherwise alienating any portion "of his land-lord's land in his occupation, but merely had a "permanency as long as he afforded to his land-lord a corres-"ponding security by his continued residence and cultivation.

CHAPTER III.

We have shown that the framers of the Code of 1793, took every possible care to protect the then existing rights of all tenants, which could be then ascertained by them, and that lands not occupied by any of the protected tenants were given to the Zemindars, as an inducement to accept the settlement at a fixed revenue, which they could hardly pay during several years to come.

It is now contended that some such right as that which we usually term a right of occupancy did originally belong, and ought now to be recognized as belonging to all Ryots in Bengal, except those whose occupation of the land is merely of a transitory nature. When our rulers have started with this idea to pass a law for the benefit of the tenant, it is no wonder that they should consider themselves justified in recognizing this right of occupancy as belonging to all such tenants, as may be shown to be settled ryots as defined in Chap V of the Bill, and thereby show to the world that they are lenient towards the Zemindars, for according to their opinion, this right could have been given to all ryots. Mr. Harrington who is justly looked upon as an authority in rent questions observes:—

"In Bengal and other provinces there are no such village republics or village communities without a Zemindar, Talukdar, or other superior land-holders and (here) as justly observed by Mr. Rows at the time when (these provinces were ceded to the East India Company, the country was distributed among Zemindars and Talukdars." Mr. Mackenzie in introducing a small bill to render the right of occupancy transferable, observed "I am perfectly willing to admit that the rule of prescriptive occupancy introduced by Section 6 of Act X of 1859 had the effect of conferring valuable right upon a class of ryots, who under the law as it stood up to that time and under the custom of the country had practically no rights. "I am ready to admit that the section is *based* upon a misconception and is justified by reference to a supposed state of things in the N. W. Provinces, which had no existence in Bengal. But those who press this argument, too often forget that inasmuch as the only other priviledged ryots recognized by Act X., are those who have held or claimed to hold at fixed rates from the Permanent Settlement, it is clear that all the vast body of Resident cultivators who had right of occupancy in the soil (perhaps the Mover means by virtue of the regulations creating the Permanent Settlement, but who were not protected absolutely from enhancement of rent, are now comprehended under the terms "ryots having rights of occupancy." I believe myself that the margin of squatters and tenants at will incorporated with this class by the operation of Section 6, is in most districts so small as to be actually inappreciable". From this supposed state of facts the Hon'ble Mover on the one hand tells us that the right of occupancy given by Section 6 was not a hardship upon the Zemindars, for it gave the right to the very persons who had that right by virtue of Lord Cornwallis' Great Code. It is true that to some of them this right was given for the first time but their number was so small "that in many districts it was inappreciable."

And secondly when most of these ryots have a right of occupancy from so long a time as Permanent Settlement, Zemindars have no ground to complain, if these rights are now rendered transferable.

With due deference to the Hon'ble Mover's opinion, I take the liberty to say, that the number of the Khoodkust ryots *i. e.*, resident ryots or their descendants, who held land at the time of the Permanent Settlement was so small at the time of the passing of the Act X of 1859, that it would not be an exaggeration to say, that one in a hundred, could not claim to hold that position. This fact may be made as clear as day light, simply by enquiring into the facts what was the population of Bengal in 1793, and what was the area and quantity of land under cultivation at that time. Before believing that very few ryots, had for the first time obtained the right of occupancy under Act X, one must believe that the quantity of land under cultivation in 1859, was very little in excess of what was under cultivation in 1793, and that during these two periods the population was almost the same. To make out a case for a ryot that he had right of occupancy under the regulations of 1793, it will not be sufficient that his grand-father was a resident cultivator in village Rampore, but it must be shown that the particular plots of land now held by him were actually held by his grand-father as Khoodkust Ryot at the time of the Permanent Settlement, and are not included in the remaining lands given to the Zemindar to be let by him in whatever manner *he may think proper*. I do not think any evidence is necessary to show that at the time of the Permanent settlement only a very insignificant part of each Pergunnah was under cultivation. Within the last 20 years, more than ½ of Pergunnah Alapsing, and half of Pergunnah Mymensing, have become cultivated. Was not only ten per cent of the gross collections given to the Zemindars at the time of the Permanent settlement? So may not a very fair idea be formed of the quantity of lands under cultivation

at the time of the settlement, from the amount of Sudder *Jamah* each Pergunnah pays to the Government? I do not think any one will urge, that the Zemindars obtained their profits simply by enhancing the rate of the rent, and not by the extension of the cultivation of the fallow lands, which were given to them by the Great Code of 1793 to be used by them in whatever way they liked.

It will be seen that even according to Mr. Mackenzie, the right of occupancy, as given by the Act X of 1859, is altogether a new right. The idea of making right of occupancy universal, did not occur to our rulers, when the bill was first introduced; but they are now so much influenced by that idea that Hon'ble Mr. Reynolds would not allow any Zemindar to grant a right of occupancy to his ryot. "The occupancy right cannot be granted by land-lord, (perhaps the word "land-lord" was used by mistake) for it is not his to grant, it is essentially inherent in the status of the resident cultivators." Englishman, March 16, 1883. Supplement.

Now the friends of the ryots may fairly ask the Zemindars, whether after the working of Act X for so many years, they wish to take away the right of occupancy from all ryots, save those who can come within the category of the *Kudim Khoodkust* of Bengal Ragulations. On the other hand, it may fairly be asked by the Zemindars, whether it would be just to create a right of occupancy as contemplated by "The Bengal Tenancy Bill" *i. e.* a right of occupancy by a touch of the land, unless the Government wants to introduce a revolution shocking to all ideas of right and property. I think it may, without creating any ill feeling on either side, amend the law relating to the acquisition of the right of occupancy in the following way.

I. Let there be a right of occupancy for the resident ryots by holding the same lands of their village for 12 years. A

village divided between two or three Zemindars should be considered as two or three villages for the purpose of this rule, unless the ryot can show that he held the land under his occupation prior to the division.

II. When a Zemindar grants a lease to a ryot comprising lands for *Bastu* as well as for cultivation, the ryot should get a right of occupancy over the lands comprised in the lease immediately on his erecting a house and residing there with his family. When such ryot is obstructed, he ought to be allowed to sue for enforcing the contract. To all other lands subsequently acquired by such ryot in the same village, let him acquire a right of occupancy by the rule of 12 years prescription. As to this kind of land a ryot could never acquire a right of occupancy prior to Act X of 1859. He was looked upon as *Khoodkust* ryot, with regard to land given to him as an inducement for his coming and settling in the village as resident cultivator; but to all other lands subsequently acquired by him, he was looked upon as *Pykust* ryot. But on account of the supine negligence of the Tesildars, ryots were generally allowed to amalgamate the subsequently acquired lands with those of the Khoodkust tenure, and in course of time by paying the rent under one heading, so mixed up the tenures, that it became difficult for the Zemindars to distinguish the new from the old one. By this means the resident ryot who had acquired land subsequently, acquired the status of a Khoodkust tenant over that land also. A purely Pykust ryot was first to be ejected, before the extra lands *i. e.* subsequently acquired by Khoodkust ryot, could be taken from him. Pykust ryot could never acquire a right of occupancy by holding the same land for 12 years. Extra lands belonging to the Khoodkust ryots could also be taken from them for the benefit of the new settlers or other resident ryots, when the growing necessities of the family needed more lands.

III. Ryots of one village should not acquire a right of occupancy in another village. This right is looked upon with very great jealousy by the ryots themselves. Many people consider that the Zemindars have no rule to guide themselves in the management of their Zemindaries. They evict their tenants and enhance their rents at their own caprices. But on enquiry it will be seen, that like the 12 Tables of the Romans, the Zemindars have certain traditionary rules which were invariably observed in letting out their lands. These rules will go to show, that they were the bye-laws of the great Code of 1793, and had for their object the extension of the cultivation of the fallow lands of the country, as aimed by the Regulations creating the Permanent Settlement.

Rule (I). No Zemindar would oust a *Bastoo* ryot from his homestead land.

(II). No Zemindar would evict a ryot from any portion of his *Nej Jote* or *Jeerat* lands, except on any of the following reasons:—

(1). That a ryot from another village wants to come and settle with the intention of cultivating certain quantity of fallow lands, provided he gets some paddy lands. In this case every ryot having extra lands *i. e.* lands which he lets out on *Adhi* or *Bhag Jote* system, or *Jeerat* land *i. e.* those subsequently acquired and contiguous to the new comers' *Baree* or fallow lands, must each of them give up a portion of such lands to make up the quantity of land required by the new ryot, and if necessary, any plot of the *Jeerut Jote* or whole of it must be given up.

(2). *Bheetee* ryots, who have extra *Jotes* under their cultivation paying low rents, must give up such *Jotes*, if new ryots come to settle in the village. Under all circumstances, on the coming of a new ryot, the old ryots must make room for him unless it creates very great hardship upon the old ryots.

(3). Competition is allowed with regard to *Jeerat Jote* or extra Jote lands among the old resident ryots.

Explanations.

(*a*). Lands appertaining to the Jote attached to the Baree of a ryot is called *Nij Jote.*

(*b*). Lands appertaining to a vacant Baree or having no Bhetee is called *Jeerat Jote,* whether held at full rate or quit rent.

(*c*). On the coming of a new ryot wishing to take up fallow lands, paddy lands must be selected, first from the Jeeruts paying quit rents and then from those paying full rates, and lastly from Nij Jote.

(*d*). Applications of ryots for Baree and Jote must be discouraged, when they can not be supplied with lands, except from Nij Jotes. Such applications are granted only on the ground of extreme necessity.

CHAPTER IV.

Another charge brought against the Bengal Zemindars, is that they have deprived the old *Khoodkust* ryots from their right of holding their lands at the Pergunnah rate. Apart from the question about the existence of any uniform rate in any Pergunnah, and whether the said rate could be enhanced by the Zemindars, I proceed to show that the ryots themselves lost that right (if any) by their own act.

Perhaps it will be conceded that excepting the lands occupied by the protected ryots, the remaining lands were given up to the Zemindar, to be let by him in whatever manner he may think proper (Section 52 Regulation VIII 1793.) Now as these remaining lands gradually began to be fit for cultivation and produce greater quantity of crops than the old lands, old ryots gave up their old lands and took up these new lands, according to the terms

demanded by the Zemindars: ryots paid higher rents for their own advantage. So on the other hand the lands given up by the old ryots, having remained in an uncultivated state for few years, attracted other new ryots, who gladly gave higher rents for them. So with the increase in the price of the produce and population, the value of the land also increased. It was the natural consequence of the operation of the rules of demand and supply. Trevor J remarked "To suppose that a Pergunnah or local rate could be permanently fixed in amount when the circumstances of the country were improving, is to suppose an impossible state of things" F. B. R. 211-226. Now to make amends for the past and to punish the Zemindars of Behar the framers of the Bill want to make right of occupancy inherent in the status of every resident cultivator, who has only to plough the land and immediately acquire a right of occupancy over it with the power of transfer. We have heard people say "such a thing can be obtained for asking," but this right of occupancy can be obtained not only without asking but notwithstanding any contract to the contrary. We are further told that Act X of 1859, has for the first time given us the power of enhancing the rents of our Ryots on the grounds stated in the 2nd and 3rd clauses of Section 17 of the said Act (See Section 18, Act VIII of 1869 B.C.), and that under the Permanent Settlement Regs, the Zemindars had no power to enhance the rates of rents payable by Ryots, and that the Pergunnah rate was fixed by authority what the Zemindars could not alter or vary. It is true that the rent of *Khoodkust* Ryots could only be enhanced under certain grounds stated in Section 60 Regulation VIII of 1793; but the rent of all other lands, which were cultivated since Permanent Settlement could be enhanced by the Zemindars without assigning any reason whatever: the ryots held these lands as tenants at will. Under the

plenary power which the Zemindar possessed of letting his remaining lands there was no necessity for providing any special grounds for enhancement. Zemindars were not bound down to any particular grounds for enhancing the rent of those lands. So it will be seen that with regard to the *remaining lands* the power of the zemindar was curtailed, and one universal rule for enhancement of rent of all kinds of lands was provided by Section 17, in accordance to the grounds stated therein only that the zemindars, can enhance the rent. As for enhancing the rent under the 2nd and 3rd grounds stated in section 17 of Act X of 1859, (see Section 18 Act XVIII of 1869 B. C.) it is hardly necessary to observe, that according to the intricate rules of calculation introduced by the High Court, enhancement of rent by a suit in Court has become an impossibility. (see W. R. Vol. VII. P. 94).

Now I proceed to consider the question whether a Zemindar can enhance the rent of *Kudim Khoodkust* ryot, beyond the Pergunnah rate. I hope it will be conceded that their rents, when happen to fall below the prevailing rate of the Pergunnah can be enhanced. It must be admitted that under the Regulations of 1793, a Zemindar could not enhance the rent of any individual Khoodkust ryot, without raising the rate of the whole village or Pergunnah, as the case might be. He could, no doubt, enhance the rate of the Pergunnah by a general measurement of the Pergunnah or village for the purpose of equalizing and correcting the assessment. (see Section 60 Re. VIII of 1793). This section, no doubt gave the Zemindar the right of enhancing the rent, as the productive power of the land increased. If we go through the minutes and correspondence of 1793 as recorded and made by the authors of the Permanent Settlement, it will be seen that their utmost desire was to put a check upon the imposition of *Abwabs* only, which were probably belived to be something essentially distinct from rent. They were probably accepted to be

akin to taxes as understood in England, and as such the imposition of *Abwabs* was looked upon with great jealousy. *The right* of the zemindar to receive rents from all ryots, according to the capability of the land, was never questioned. Lord Cornwallis, in order to show that the interference of the sovereign power with the right of the Zemindars to impose taxes was not inconsistent with their proprietory right, observes, "If Mr. Shore means "that after having declared the Zemindar proprietor of the soil, "in order to be consistent, we have no right to prevent his im- "posing new Abwabs or taxes on the lands in cultivation I must "differ with him in opinion, unless we suppose the ryots to be "absolute slaves of the Zemindar. Every biggah of land "possessed by them must have been cultivated under an "express or implied agreement, that a certain sum should be paid for each biggah of produce and no more." His lordship, after expressly declaring that the Zemindar could not impose taxes or *Abwabs* upon the royts and that government had an undoubted right to abolish such taxes as are *Oppressive*, proceeds "Neither is, prohibiting the Land-holder to impose new Abwabs or taxes on the lands in cultivation, tantamount to saying to him, that he shall not raise the rents of his estates. The rents of an estate are not to be raised by the imposition of new Abwabs or taxes on every biggah of land in cultivation" Then further on, His Lordship observes "the rents "of an estate can only be raised, by inducing the ryots to "cultivate the more valuable articles of produce and to clear "the extensive tracts of waste land, which are to be found in almost every Zemindary in Bengal"

In the great rent case, the Hon'ble Justice Trevor observes, "to suppose that a Pergunnah or local rate could be permanently fixed in amount when the circumstances of the country were improving is to suppose an impossible state of things. The

proportion of the produce calculated in money payble to the Zemindar represented by the Pergunnah or local rate, remains the same; but it will be represented, under the circumstances supposed, by an increased quantity of the precious metals" See F. B. R. P. 211-226. If we go through the Regulations creating the Permanent Settlement and the regulations subsequently passed for the easy recovery of rent as well as for the protection of auction purchasers, it will be seen that the authors of those Regulations always assumed the existence of an inherent power of enhancement of rent of all lands in the Zemindars and other actual proprietors of the soil, and therefore it was thought necessary to make special rules for the protection of those tenure holders who were considered entitled to protection from further enhancement of rent.

The restriction imposed upon the power of the Zemindars by Sec. 2 of Reg. 44 of 1793 was intended for their benefit. It gave them the power of letting their lands to their best advantage after every ten years.

It must be conceded that before the Permanent Settlement and during the Mogul Government, the Zemindars enjoyed almost all the powers of an independent tributary prince. It was the aim of the Permanent Settlement to give to the Zemindars the benefits of a fixed revenue, and in consideration of it take away all those powers and put the Zemindars down to the level of ordinary subjects so every power which has not been expressly taken away by the law must be assumed to be still existing in the Zemindars. The Regulations no where forbid the Zemindar to raise the Pergunnah rate; but they are declared competent to raise the same upon a general measurement of the Pergunnah, for the purpose of equalizing and correcting the assessment."

CHAPTER V.

Ryot's occupancy right in the land has been made heritable like any other immovable property; whose any other immovable property? Perhaps those of the Ryots. (1.) Suppose a ryot died intestate, leaving no other immovable property of his own. excepting the ryoti tenure (2. Suppose a ryot died, having for the first time purchased a Taluk; if he is a Mahomedan, his son will say, as they have no other immovable property, their *jote* must be distributed according to their common law; on the other hand daughters and other heirs, will invoke the Mahomedan law.

In the second case, the son will say, that Section 50 cl,E. & G. of the Act (now Bill) assume, that other immovable property has been inherited in the family of the intestate ryot according to some law, and renders the ryoti tenure heritable according to it; but they had no other immovable property or it has never been inherited, so let all kinds of their property be inherited according to their common law, which excludes daughters and other heirs. If our rulers intend to introduce the law of the intestate, it would then be necessary for them to introduce many important changes in the common law of inheritance, prevailing among the Mahomedan and Hindu ryots of Bengal. I would take the case of a Mahomedan first.

According to the common law, prevailing among the Mahomedan ryots, the daughters are generally excluded from inheritance; sons take the whole property; but when there is no son the daughter who lives in her father's house, takes the whole property to the exclusion of other daughters *e., g.* Shaik Nojeeb dies, leaving three sons, and three daughters living with their husbands in three different Pergunnahs far off from their father's house. The lands left by their father were partly covered by grass jungles, and crops of some portion used to be destroyed by inundation. The brothers by their own and hired labor, made the entire

quantity of the lands fit for cultivation, and paid their rents regularly to the zemindar for several years. After the expiration of 11 years, 11 months and 29 days, the daughters institute a regular suit for possession and *Wasilat* against their brothers, and obtain a decree according to the terms of the plaint. By this decree the poor brothers are ruined, and the zemindar is placed under the necessity of seeking for half of his rent from three of the non-resident female ryots; but the dispute does not end here. Some enemy of these unfortunate brothers, takes a sublease from the sisters, and by constant quarreling, compels them to quit the village altogether. So a tenure, which now entirely devolves upon the son or sons of the ryot, will be divided among dozens of claimants to the injury of the ryots and the Zemindar equally. Daughters, living with their fathers, will also be sufferers by the introduction of the Mahomedan law. Among the Hindoo ryots also, there is a common law of their own which materially differs from the Hindoo law as administered in Bengal. According to the Bengal School barren daughters, childless widowed daughters, and daughter's who are mothers of daughters only, are excluded from inheritance; so brothers and sisters can never be heirs to each other; but these rules are not observed among the Hindu ryots, and these daughters succeed to their father's property to the exclusion of the relatives, who, but for this common law, would have taken the property left by the deceased ryot. When I say that under the common law, daughters excluded by Hindu and Mahomedan law, inherit, I mean that they inherit other than the landed property left by their father, and having inherited the same according to the said common law, they are allowed, in order to make up the period of 12 years necessary to constitute a right of occupancy, to take into account the holding of their father, as provided by section 6 Act VIII of 1869. In the case in 7 W. R. 528. Peacock, C. J. observed

"There are many holdings which are heritable by custom or otherwise quite apart from the effect of a right of occupancy. In order to make up 12 years necessary to the *acquisition of a* right of occupancy, the holding of the father or other person from whom a ryot inherits (when he does inherit or in any case in which he is entitled to inherit) may be taken into account, but it does not follow that a holding which was previously non-heritable becomes heritable as a consequence of the acquisition of the right of occupancy." Now, a distant relative of a deceased ryot is not entitled to succeed by inheritance when the Zemindar had, on the death of the ryot, made arrangements with another ryot (8. W. R. P. 60) The framers of the Bill, by one stroke of their pen, make destitute many sonless widows and at the same time deprive the Zemindars from their right of getting back their lands for want of descendants in the direct line. It seems therefore, that the framers of the Bill have one object in view, *viz*, destruction of the Zemindary right. So long as they are successful in their aim, they do not care to see who else is affected by their destructive measure. The introduction of Hindoo and Mahomedan law will seriously affect the agricultural population of Bengal. If, however, the framers of the Bill want to make the right of occupancy heritable, they should adopt the rule laid down in Section 9 of the N. W. P. Rent Act, which provides that no collateral relative of the deceased who did not then share in the cultivation of his holding, shall be entitled to inherit. It seems that the author of this act had carefully studied the common law of the peasantry. It has been admitted that the right of occupancy, as given by Section 6 of Act X of 1859, was based upon a misconception and was justified by reference to supposed state of things in the N. W. Provinces which had no existence in Bengal. The ryots of the N. W. Provinces enjoyed the right of occupancy from a time

Section 9. N. W. P. Rent Act.

long anterior to the introduction of Act X of 1859; still the authors of the N. W. Provinces Rent Act of 1873, did not think it proper, to make the right of occupancy heritable and transferable like other landed property in that Province.

CHAPTER VI.

Whether right of occupancy should be transferable or not.

So much has been said in support of the either side of this question that I do not like to advance the arguments already urged. Suppose that the ryots will be benefitted on obtaining the privilege of selling their right of occupancy; but why should they be vested with that privilege the first time to the prejudice of the Zemindars? Why do you rob Peter to pay Paul? It is contended that the Zemindars cannot be prejudiced on account of the right of transfer being given to the ryots. If this right is given for the first time to the ryots, a right of pre-emption is also given to the Zemindars, by the exercise of which they can prevent the encroaching of objectionable tenantry in their Zemindary. But who would like to invest money for the purchase of a property which he cannot use or enjoy with freedom? Section 56 of the Bill provides that when the land of the occupancy ryots comes to the *Khas* possession of the land-holder, he must not let it at a rent higher than what he was receiving before his purchase or before the land had devolved on him by lapse or relinquishment; but the person to whom it is let, will get it with a right of occupancy; we really cannot understand why this limitation is imposed upon the Zemindars. If it be to discourage the purchase of the right of occupancy by the Zemindars, why then is the right of pre-emption given to them? Any other purchaser of occupancy holding, will have the right of using it in any manner and letting it at any rent he chooses, but when the occupancy

holding comes to the possession of the Zemindar, these rights must be denied to him. We cannot understand why our rulers add insult to the injury. I do not know why the framers of the Bill can not even bear the idea of allowing the Zemindars to buy their own property. The public can easily see with what inimical feelings against the Zemindars, the Bill has been framed.

CHAPTER VII.

Enhancement of the Rent when table is not in force.

Unless the rent is left to be determined by the rules of demand and supply, it is very difficult to frame a rule which will be conducive to the interest of both the parties, the Zemindar and the ryot equally. However extortionate a Zemindar may be, he cannot get more than the market value for his land; it is useless for him to demand higher rent for his land which the ryots cannot afford to pay. If the rent be left to be settled by competition, no one would offer a higher rent for lands without keeping a good margin for his profit. No body can blow hot and cold together. Zemindars are told (at least they were told before) that they are the proprietors of land, but in the same breath a hundred and one limitations are imposed upon their right of settling their rents according to their own choice. Consider for a moment that if the legislature were to pass a law to the effect, that the jewellers of Calcutta shall not be entitled to demand more than three hundred rupees for a diamond ring of a specified quality and size from the *Koolin Brahmins* of Bengal, so much from the *Soodras*, so much when there is a competition between two persons of different castes, so much from a pure *Koolin* and so much from a *Bhonga* Koolin, the public would then very easily be able to see how this rule operates. According to Sections 62 and 75 of the Bill, both in the preparation of the table of rates and the enhancement of rents,

the enhanced rent shall not, in any case, exceed one fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which the ryots sell at the harvest time. I do not know, whether our rulers have learnt the fact, that the *Khudkust* ryots of Bengal pay for their holdings a higher rate of rent than the rate paid by the *Pykust* ryots. Apart from the question, whether one fifth would be fair rent or not, let me proceed to cite an instance to show how injuriously *this rule of one fifth* will operate against the Zemindars. The ryots of Pergunnah Mymensing having heard that a law will soon be passed, limiting the rents of the Zemindars to one fifth of the gross produce, as stated above, have combined together not to pay their rents unless Zemindars would consent to take Rs. (3-6) per *araha* or about 13 as. per Biggah, which they say is equivalent to one fifth of the produce. They are eagerly waiting for the passing of the Bill into law, when they hope either to set up claims of abatement in rent suits, or institute suits for abatement of rent. One Moulvie Hamidudeen has put up this idea into their heads and reaping a good harvest out of their credulity. Some of the pleaders of the Mymensing bar expect about 20,000 *abatement* suits after the passing of this Tenancy Bill. All the ryots will have one common object in these suits; so there will be no want of witnesses to substantiate the claims for abatement advanced by them. They will not pay their rents until the final decision of these suits, and in the *interim*, Zemindars shall have to pay their revenue and cess from their own pockets as before. When the mere name of the Bill has produced such an impression in the mind of the ryots, I cannot imagine what will be the fate of the Zemindars when it is passed into law. I think the whole of the Bengal peasantry, will rise up in a body and institute suits for abatement with the hope of substantiating their claims by perjured witnesses.

If it be thought inexpedient, to leave the rent to be settled by competition, why not half or one third of the gross produce of all sorts of crops be given to the Zemindars, as now obtained by them on letting out lands in *Bhagjote* system? Rent in money was substituted for rent in kind as the country progressed in civilisation and prosperity. It was found, as a matter of fact, by Mr. Harrington, that at the time immediately preceding the Permanent Settlement, the rents paid by the cultivators were usually equivalent to half or a little more than half the produce. (Harrington Vol. III, page 324). During the reign of Alladin and of Moorshedkooly Khan the same rule prevailed. It is still extant in Behar and in some parts of Bengal, where rent is received in kind.

According to section 74, the rent of a ryot can be enhanced on the ground that the rate of rent paid by him, is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity. The word vicinity is very general and vague; it admits of different interpretations according to the bent of the mind of the judge. Suppose a plot of land is surrounded on all sides by very fertile lands belonging to a helpless widow, who cannot fight with her tenants and therefore contents herself by receiving whatever rent they choose to pay her. There also may be lands belonging to a Zemindar who, without enhancing the rent of the land, receive *Abwabs* and *Khurchas* from the ryots who gladly pay them in consideration of the low rent for which they are allowed to hold them. If these lands are taken as exemplar fields, it will simply be ruinous to the Zemindars who seek to enhance the rent of their lands on the ground, stated in clause (1) Section 74 of the Bill. In such cases we ought to seek for the exemplar lands elsewhere, where the rent is fairly settled. The surrounding lands may also be owned by turbulent Ryots

persistently resisting the claims of the Zemindars for a fair enhancement: lands of such ryots also, should not be taken as exemplar.

CHAPTER VIII.

Of rent payable in kind. According to the existing custom of the country when the Zemindar takes the risk of cultivation in *Bhaggote* system, he gets one half of all the crops, and in some rare cases, he takes $\frac{3}{4}$ and the ryot gets only $\frac{1}{4}$ of the crop. But when the ryot takes upon himself the whole risk of cultivation, he gives to the Zemindar a specified quantity of all the crops, which generally amount to one third, and in rare cases, to one half the produce. Now, by one stroke of their pen, the framers of the Bill have robbed the Zemindars of their share of the produce and given them to the ryots. According to Section 81, the right of the Zemindar to receive half the share of all the crops, is taken away for the benefit of the ryots, who did not even ask for it; he is also allowed to pay his rent in money which shall be fixed at the descretion of the court, according to the prevailing rate payable by the same class of ryots for land of similar description; (*Vide* Section 81 and 82). I shall very inadequately express the extent of distress which the rules, contained in Sections 81 and 82, will bring upon the petty Talukdars, if I were to say that they will be simply ruinous to them—they (the Talookdars with their families, will have to starve unless they will be able to secure their daily bread by begging.

CHAPTER IX.

Rules to enhance money rent. I would not object to enforce the rule laid down in Section 76, when the enhancement is sought under the grounds stated in clauses 2nd and 3rd of Section 74.

But there are ryots who pay very low rent on account of the helplessness of the Zemindars. They not only pay low rent themselves but dissuade other ryots also to pay it at the prevailing rate of the neighbourhood. I know of instances, in which these wicked ryots succeeded not only in avoiding enhancement, but in reducing the rate also of the whole village by inducing other ryots to prove the rate according to their allegation. When they see that one man has succeeded, the entire body of the ryots decline to pay rent at the prevailing rate of their village, but offer to pay at the rate decreed in the rent suit—which means the rate admitted by them. I know several villages, where ryots reduce their rent every second or third year. When the rents of these ryots are enhanced under the 1st ground, I do not see under what reason sympathy can be shown towards them. It is enough that they were allowed to withhold the payment of their just rent for so many years. I know of ryots who have reduced their rent, since the passing of Act X of 1859. If their rents are enhanced according to the prevailing rate, they will have to pay four times the rent they now pay. They sometimes dispossess a poor ryot from a plot of land, and as soon as it comes to their possession, they begin to pay rent at their own rate. Unless the framers of the Bill make another classification for these *Juburdast* ryots, there is no earthly reason why the benefits of Section 76 should be awarded to them. If in the case of these ryots, rent can not be enhanced beyond double the rent previously paid by them, it would then follow, that in many cases, the enhanced rate will not exceed half the prevailing rate. Section 76 has fixed the maximum rent, but the minimum should also be fixed. When enhancement is sought on the 2nd ground, *viz.* for the increased productive powers, the enhanced amount shall not be less than half the rent previously paid, and when enhancement is sought on the 3rd ground, the rent enhanced should not be less

than one fourth of the rent previously paid by the ryots; but there should also be corresponding precise rules for the reduction of rent. A sudden reduction of rent, on the ground stated in Section 79, may tell against a Zemindar in the same way, as a sudden increase, against the ryot. Section 79 provides, that the Court may direct for such reduction of rent as it thinks fair and equitable; but like Section 76, no limit is imposed upon the discretion of the Court.

CHAPTER X.

Rules regarding Pasture lands. Section 80 provides, that Sections 62 to 79 shall not apply to land *fit to be used*, or which in accordance with the local usage is used, only as pasture; but when such land is held at a money rent by an occupancy ryot, the landlord may, subject to any contract between the parties, institute a suit to enhance the rent on the grounds mentioned in clauses A. and B. Section 80. When a Zemindar institutes a suit for enhancement of rent against a ryot, on hearing about the institution of the case, he will cease to cultivate his best lands, and when they are sufficiently covered with grass and other jungles, he will ask the Munsiff-Baboo to come and see for himself, whether or not some of his lands are fit as pasture, and it will then be alleged, that if the said lands are *fit to be used as pasture*, the provisions regarding enhancement do not apply to them. The words "only as pasture" refer to lands so used in accordance with the local usage.

CHAPTER XI.

Sections 59 to 61 ought to be purged out of the Bill altogether. They interfere with the freedom of the ryots to contract with the Zemindar. If the ryots are to be considered as sentient beings capable of performing other worldly affairs, why

should they be considered worse than babies as far as Zemindars are concerned? A plot of land may be very necessary for a ryot, and it may be advantageous for him to get it even by paying double the rent, but under Section 59 clause 2, a revenue officer shall not register such *Kabuliat* and thereby give to it the legal force of a contract. According to Section 61, clause (I) when a Ryoti-land, which had previously been held by a tenant at money-rent, comes to the *Khas* possession of the Zemindar, he shall not be able to get from a settled ryot a rent higher than what was paid by the previous tenants. So far as settled ryots are concerned, a kind of *Mockrooary* tenure is created for them over all the lands. By clause 2, a revenue officer is not to register any contract by which a ryot engages to pay a rent more than one fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which the ryots sell at harvest time. So it will be seen that the Bill attempts to put the Zemindars under every possible disadvantage, and every section of it breathes an inimical feeling against them. I think the ryots themselves could not have conceived of such one-sided legislation.

Of the preparatton of the table of rates and produce &c. The provisions of Section 62 would have been greatly beneficial to the Zemindars, if there had been a provision in the Bill for the speedy realization of their rent, at least during the pendency of the enquiry. The entrance of a revenue officer into a Zemindary with the intention of preparing the table of rates, would be a signal to the ryots to stop payment of their rents. They will in one voice declare, as they are doing in Pergunnah Mymensingh in the District of Mymensingh, that they will not pay their rents until the rate is settled.

By Section 62, the power of selecting assessors is entirely left with the Local Government. The Local Government will generally

be influenced in the selection of the assessors by the opinion of the District Magistrates, who will very naturally select them from some of his energetic Deputy Magistrates having little or no experience in the zemindary matters. There should be an express provision in the law to appoint one half of the assessors from the zemindar class, and the other half from the officials and pleaders, or other persons taking interest for the ryots.

We have shown the way in which the Tenancy Bill gives to all settled ryots the right of occupancy over every plot of land found in their possession after the 2nd of March 1883. After this sweeping confiscation of private rights under the garb of legislation one would naturally expect, that the remaining lands must have been entirely left under the disposal of the Zemindars. But alas! this consolation too is denied them. According to Section 90 of the Bill, an ordinary ryot, notwithstanding any contract to the contrary, shall not be ejected from the Ryoti land by his landlord, except as provided in clauses A, B, and C of the said section, *i. e.* for using the land in a manner which renders it unfit for tenancy, or for breach of any contract which renders the ryot liable to be ejected, or in execution of a decree of ejectment passed on the ground that the ryot has declined to pay the enhanced rent when demanded by his landlord, as provided in Section 119 of the Bill. In a suit instituted for ejectment of the ryot on the ground that he has declined to pay the enhanced rent, the Court may pass a decree for ejectment on condition that within 15 days from the date of decree, the landlord shall deposit in Court such sum (if any) as may be declared by the decree to be payable to the ryot as compensation for improvements, and a further sum as compensation for disturbance equal to ten times the yearly increase of rent demanded. I, as a Zemindar, let out 50 Biggahs of land to A, an ordinary ryot or who is not at all a ryot of mine, at

a very low rent with this express stipulation that after the expiration of 5 years he shall have to give up the land to me. The ryot takes the lands with his eyes open. His holding for 5 years sufficiently compensates him for the troubles he took for the improvement of the lands, but still at the expiration of those 5 years, I am not only placed under the necessity of a protracted litigation, but am compelled to pay the compensation equal to ten times the yearly increase of rent demanded, or in other words I am required to buy my own property.

We have seen how the present rule regarding the service of notice in enhancement and ejectment suits, is abused by the sympathising Munsiffs. They, as a rule, in order to discourage the Zemindars from instituting these suits, disbelieve the evidence given by them to prove the service of notice. A similar provision is made in this chapter also. When an ordinary ryot does not agree to the enhancement demanded, the landlord may cause to be served on him, through the Civil Court, a notice of the enhancement not less than six months before the commencement of the agricultural year in which he desires the enhancement to take effect. The Ryot may, within one month from the date of the service of the notice, present to the court issuing it, a statement in writing declaring his willingness to pay the enhanced rent. If the ryot neglects to present the petition within the said one month, the landlord may, within 10 weeks before the commencement of the agricultural year next following, institute a suit to eject him. Now, I may assert this without fear of contradiction, that in 99 cases out of a hundred, the Ryots shall appear and deny the service of notice with the same success as they do now. If they have no right to hold the lands after the expiration of the term of the lease, I do not see any reason why they

should not be looked upon as pure wrong doers. I cannot avoid the temptation of recording an annecdote which I have heard from a friend in my district and which runs thus :—

A petty land holder in 24-Pergunnahs, after having instituted suits of ejectment against a Ryot on six or seven occasions, and finding his suits dismissed on the flimsy pretence that the service of notice was not proved, or that it was not sufficient in law, at last in a mood of utter despair, addressed his opponent thus: "Brother! listen, you have succeeded on all occasions in getting my suits dismissed on the frivolous ground that the service of notice was not proved; but this time I would stuck up the notice on your own back by ironpegs. You are sure to bring a criminal charge against me, and no doubt I shall be punished for doing so; but I do not care for it, as thereby I would gain my own object; for in that case I would be able to prove by your own admission the service of notice beyond a shadow of doubt". However romantic this annecdote may appear, it conveys a world of meaning for the purpose of seeing the existing tendency of our Courts of Justice. It seems the authors of the tenancy Bill could not content themselves by creating a legal disability in favor of the settled Ryots only; so a disability of the nature contained in Sections 59 & 61 is created in favor of ordinary Ryots also An ordinary Ryot shall not be bound to pay for his holding, a money-rent exceeding five-sixteenth of the estimated average annual value of the gross produce of the holding in staple crops, calculated at the price at which the ryots sell at harvest time. After the second day of March 1883, any contract by an ordinary Ryot to pay higher rent shall not be valid; perhaps ryots who are paying a higher rent now, shall be entitled to an abatement under the provisions contained in the beginning of Section (119.)*

* This Section alone may give rise to thousands of suits for abatement of rent.

CHAPTER XII.

Sections 14 and 15.

Before giving any opinion on the effects of Sections 15 and 16 of the Bill, let me proceed to state how the presumption from 20 years uniform payment of rent created by Act X of 1859 operated in Eastern Bengal. During the 1st few years of the passing of the Act all the pleaders of the Munsiff's Courts, and the Mooktears, and the retired servants of the Zemindars became *Mokrooridars* by the help of forged *Dakhilas*, and evidence of hired witnesses; then came the second batch, *viz.*, *Mondols* and other well-to-do ryots. Whenever a rent suit was instituted the written Statement was invariably as follows.

1. I hold lands at fixed rates from previous to the Permanent Settlement.

2. I hold *Dakhilas* for 20 years immediately preceding the institution of the suit to prove that during that period my rent has not been changed.

3. My rent is Rs. 5, but the rate claimed by the Zemindar is exorbitant; the rent of every Biggah of land in my village is Annas 2 and not Annas 10 as claimed by the Zemindar.

In suits of this nature the Ryots were successful in two different ways. In some of these suits they succeeded in proving the *Dakhilas* by false witnesses. In others, in which they failed to substantiate the special plea of 20 years uniform payment of rent, the Deputy Collectors, most of whom had identical interest with the ryots, came to the following conclusion. "It is true that the *Dakhilas* filed by the defendant have not been proved, but as the plaintiff has failed to prove his claim by any written *Kabuliat* of the ryot, I can only decree the claim to the extent admitted by him." Thus the Zemindar was thrown under the mercy of the Ryot, who from that date began to deposit his rent in the court until he compelled the Zemindar by the united passive resistance of the whole

village to come to terms. Shaik Tamiz has obtained a great victory over his Zemindar. This news spread like wildfire in his own and other neighbouring villages, and the other ryots came in flocks to his *baree* for *paramarsa*. Every body knew, that Shaik Tamiz and his father Shaik Nozib annually paid Rs. 20 as rent, Rs. 2 as *Dihikhorcha*, Re. 1 as *Patwaree fee*, and Annas 4 as *Bastoo poojah*; but how he could reduce his rent to Rs. 5 was a mystery which was revealed by Shaik Tamiz to his audiance thus: "Brethern, listen, *Lat Suhib* has sent orders to all the *Hakims* to the effect that the Zemindars cannot get any thing in the shape of rent beyond that admitted by the Ryots. All the Ryots are advised to stop payment of rent and to raise up, the same kind of objections in rent suits, as Tamiz did. From that date the ryots combined and each offered to pay the quitrent as suited him best. Now, the position of the Zemindar can better be imagined than described; like most of the Zemindars he had no *Kabuliat* to prove the rent received by him, and as a rule, his *Jama-wasil-bakee* papers will be disbelieved. If he sues the ryots to enhance their rents on the ground that they pay their rents at a rate much below the prevailing rate payable by the same class of ryots, how is he to prove the fact. On the one hand the evidence of his witnesses is sure to be disbelived on the supposition that the Zemindars keep an unscrupulous set of men in their service to prove their cases by giving false evidence, as well as, by preparing false papers; on the other hand the whole body of the ryots will heroically swear, that the prevailing rate is that admitted by the defendant ryots. I need scarcely mention that to enhance the rent of a ryot on the other two grounds provided by Act X of 1859 is an impossibility. Under this critical position the only remedy left to the Zemindar is to bribe off the wicked portion of the tenantry by acceeding to their terms. So the Zemindar in despair sends a messenger to Shaik

Tamiz with proposal of amicable settlement. Shaik Tamiz comes and gives *nuzzur* of a rupee to the Zemindar. At the first instance the Zemindar abuses him as *Baiman* and *Nemokharam* but at the same time he is told that his father was a good honest ryot of the Sircar. Shaik Tamiz, without referring to his fraudulent defence, tells to the Zemindar that the village Tesildar committed great *Zoolum* on him in various shapes, and the reason why he did not come to the *Hoozoor* to complain against the conduct of the Tesildar was, that he the Tesildar had terrified him that if he did come to the Kachary, his *Hoozoor* would kill him as a sacrifice before the Goddess Kalee. Tamiz gets a sanction from the Zemindar to his tenure and rent as admitted by him and decreed by the Court. Some 3 or 4 days after this he returns with all the ryots, and they agree to pay the rents as before. Under this private arrangement Tamiz's *Chacha* (uncle) Shaik Noboo, and brother-in-law Peer Box, who have influence over other ryots equal to that of Tamiz, must get a reduction of 4 annas in every rupee in their rent, and that they will not have to pay any interest in case they fail to pay the rents according to the customary *kists* of the Pergunnah. The Zemindars who cared for their honor and respectability lost much by the wickedness of Shaik Tamiz—type of ryots. On the other hand petty land-holders began to fight with the weapons of the ryots; most of them, in order to prove their just claims, filed forged *Kabuliats* in rent suits, and attempted to prove them by perjured witnesses. They succeeded in some of these cases and failed in others, but they were eventually ruined by the expenses of the litigation.

In enhancement cases the invariable rule was to dismiss them on some preliminary grounds, such as finding fault with the language of the notice or of the service thereof. Ninety per cent. of these enhancement suits were dismissed; of the remaining ten, five went up to High Court by way of appeal; of

these five per cent appeals ninety-five per cent were decreed by the Court; so the respectable Zemindars seeing all these had resorted to the bribing off their own wicked tenants.

Ryots, who by virtue of Act X of 1859 thus suddenly became holders of transferable interest, and also those who gained right of occupancy, let out their lands to others at exorbitant rackrents to the detriment of the interest of the actual tillers of the soil and of the Zemindars. The Zemindars, having no fallow lands of their own, cannot spare any to new tenants and bring the uncultivated lands under cultivation. It is a known practice in Bengal that if a Zemindar can give a Biggah of good paddy land to a ryot he can undertake to cultivate three Biggahs more of the fallow lands; as I have already pointed out, the Zemindars having no more of good paddy lands at their disposal now, cannot bring in new tenants for the cultivation of these fallow lands. The occupancy holders have become too idle to care for any more lands which require capital and labor to make them cultureable; so the provision of Act X is thus leading to an universal creation of idle middlemen—mere drones living on the market rent obtained from the actual tiller of the soil. Thus a right, which was originally given to the Zemindars *i. e.*, to *let their lands as they liked*, has suddenly been taken away from them, and given to a class of men who are so fast becoming idle and useless members of society. The above remarks do equally apply to Act VIII of 1869 (B.C.) During the months of March and April last, I, in company with a few friends, went out on a shooting excursion in Purgunnah Patiladadho belonging to Moharajah Sir Jotendro Mohun Tagore of Calcutta There I saw a class of occupancy ryots called *Jotedars* possessing hundreds and semetimes thousands of Biggahs of land yielding an income of rupees 300 hundred to 6,000 per annum. I heard that two or three of these jotedars get as much as ten to fifteen thousand rupees a year, but they

had not got a single plough wherewith to cultivate a Biggah of land. They have numerous ryots in their *elecka* living there without any right of occupancy whatever. They are the monarchs of all they survey, there is no law to interfere with any arrangement they may make about their lands. They pay a rent of annas 4 to 10 per Biggah, but they realize from the actual tiller of the soil Rupee 1 to Rupees 2 per Biggah. On enquiry I also found that generally the ryots in the *Khas* possession of the zemindar are happy, and pay rent at much lower rates than their brethren under the *Jotedars*. These men, who according to the old custom of the country could only retain their lands so long as they cultivated them with their own ploughs and lived in their holding, are invested with all the privileges of an absolute owner and can, in the opinion of our Rulers, be trusted with all these plenary powers over their ryots ; but the ancient privileges and rights of men like Moharaja Jotendro Mohun Tagore and Moharajahs of Burdwan and Durbhungah whose ancestors accepted the Permanent Settlement under the express understanding that they shall be allowed to let out their lands as they liked, must be curbed at every step. Has the Tenancy Bill made any provisions for the protection of the ryots living under the occupancy holders of 1859 ?

Now to return to the subject under our consideration *viz.* the presumption arising from the uniform payment of rent for 20 years. I need scarcely mention that under the existing law, a tenant in order to entitle him to the said presumption must prove that his rent has not been changed for a period of 20 years before the commencement of the suit, and then a presumption arises that the ryots held the land at that rent from the time of the Permanent Settlement. This rule of presumption is opposed to all fundamental rules of evidence as being a presumption

based upon presumption. According to the Bengal regulations, a Talukdar had to prove that he held his land at a fixed rent from a time previous to the Permanent Settlement. At the time of the passing of Act X of 1859, it was considered that it would be a great hardship upon the Talukdars, if the Courts were to exact from them that amount of proof after such a lapse of time. It was therefore thought necessary, without interfering with the regulations, to create a presumption in favor of the Talukdars. So it was enacted by Section 15 of Act X of 1859 that the rent of no dependent Talukdar should be enhanced when it is proved that his rent has not been changed from the Permanent Settlement. This fact also was considered as very difficult to prove, so another presumption was allowed to take its place as provided by Section 16 of Act X of 1859 (*vide* Sections 16 and 18 of Act VIII of 69 B. C. Now, instead of the rule requiring the proof of the uniform payment of rent for 20 years before the commencement of the suit, the Bill proposes a modification by allowing the uniform payment of rent to be proved for any period of 20 years. It will simply hold out a premium for forgery and chicanery. As for the provision contained in Section 16 of the Bill, I can only observe that it is unprecedented in the annals of the Indian tenantry. I think no one has ever heard that a tenant can acquire *Mokrooary* right over his holding by paying a fixed share of the produce of the land. If it be thought expedient on political grounds, or for the financial necessity of the Government to destroy the Zemindary Settlement let it be done openly.

CHAPTER XIII.

Recovery of Rent.

It will be seen that the Tenancy Bill is conspicuous for the absence of any provision which would facilitate the easy recovery

of rents from the tenants. Instead of giving any facility for the purpose the Bill virtually takes away from the Zemindars the only privilege which the existing law gives them for recovery of rents by distraint of crops, by making the process much more expensive and tedious. The principle of the old law was that for the punctual realization by Government of its revenue, it was essential that landholders and farmers should have the means of compelling payments by their tenants without being obliged to have recourse to Courts of Justice, and of avoiding the delay and expense attendant upon a law suit for recovery of rent. Regulation 7 of 1799 gave the Zemindar an authority to compel the attendance of a ryot to his *Cachary*, and construction 382 of the Sudder Court declared that the right of compulsion extended to the punishing of the recusant ryots, and that if complaint was made to the Magistrate for wrongful confinement or restraint, he was to decide whether unnecessary severity was used or not. In cases where the Zemindar was not strong enough to compel the attendance of his ryot, he had only to file a petition in the Court stating the amount of arrears due from him, and he could not file his defence without depositing in Court the amount claimed against him. Such a procedure would prevent much of the vexatious opposition with which the Zemindar is met with now a days. Every body knows the rigour of the sale law; hundreds of its victims can be found in Bengal. If the said law was hard enough for the Zemindar from its very promulgation, its rigour has been doubled by the operation of the Road Cess Act which renders him liable to pay the Cess payable by his ryots. There are many Collectors in Bengal who have made it a rule not to accept the Government revenue from the Zemindar, unless it is accompanied by the Cess payable by him. I hear the Collectors are authorized by the Board of Revenue to adopt this procedure for the realization of the Public Works and Road Cess. Now these

two Cesses combined together have, in many instances, exceeded the Government revenue ; so it can be seen what a large amount the Zemindars are bound to pay to the treasury with clock-work regularity. Does the present law or the bill give any facility to the Zemindars for the recovery of rent? Now as the law stands, a claim for rupees 2 cannot be recovered without undergoing an expense of rupees 10 and the delay at least of a year. The ryots may, if they choose, easily ruin a Zemindar by combining together not to pay their rents ; but to obtain a decree against a tenant for a year's rent only the Zemindar must, under the existing regular process of the law courts, have to spend at least 3 year's rent in the shape of court expenses, and that even with the chance of eventually finding that half the amount of the decree is not recoverable partly for the *bonâfide* pauperism of the ryot, and partly for the fraudulent claims advanced on his property by his friends in order to secure it against the execution of the decree. In these rent suits delay is dangerous. The proverbial improvidence of the Bengal Ryots is too well known to need any comment from me. To remedy this evil I would propose the following measure regarding speedy realization of rent.

1. Whenever a verified plaint is filed by a Zemindar stating the amount in arrear, the rate of rent, and the quantity of land, such plaint should be taken as a *primâ facie* evidence of his claim, and the recusant ryot should not be allowed to raise any objection to it without despositing in court the full amount claimed against him. When such deposit is made, the Zemindar should be allowed to take away the amout pending the final disposal of the case, and if the decission be adverse to the Zemindar the Court may be authorized in that very case to award damages not exceeding the amount claimed, leaving the zemindar to enhance the rent according to the regular

course provided by the law for the enhancement of rents. If, in a suit for arrears of rent, it can be shown by the zemindar, that according to the prevailing rate of the village the recusant ryot ought to pay him the amount claimed, the Court should decree the claim thus advanced leaving the ryot to institute a suit for the reduction of rent on the ground, that notwithstanding the prevailing rate, he has all along been paying the amount admitted by him ; at any rate in such cases the onus of proof should be thrown on the ryot. In a suit of this nature if the ryot succeeds, the zemindar should be held liable to pay damages to him, not exceeding double the amount claimed exclusive of the costs of the suits. In the absence of any contract in a rent suit a presumption ought to arise that the recusant ryot also has been paying the rent according to the prevailing rate leaving him to rebut that presumption by regular suit. Now, a notion prevails among the ryots, that the zemindars cannot recover a rent higher than what is admitted by them ; so in every rent suit the ryots imbued with this idea generally file the written statement reducing the rent according to their own choice. I can cite instances in which the ryots opposed the claims of the zemindars for recovery of rents founded on the registered *Kabuliats* executed by them. When the zemindars have to deal with such a set of gentry, it is not too much for them to ask for a law which would afford facilities for the easy recovery of rents, specially when it is sought with the risk of being saddled with heavy damages. Under the aforesaid circumstances, I do not think that the prayer of the zemindars can be called unreasonable. Now, to return to the subject under our immediate consideration, I would propose, that in a rent suit if a ryot sets up a *Mokrooary* title stating the amount of his rent much less than the amount claimed, the suit ought to be dismissed at once leaving the zemindar to institute a suit for enhancement of rent,

and for declaration that the tenure is not *Mokrooary*. Such a suit should be allowed to be instituted without subjecting the zemindar to the dilatory and vexatious process of serving the ryot with notice of enhancement. The claim in this suit and in that previous to it for arrears of rent should be considered as a sufficient notice. If the ryot had no good title to hold the land at a fixed rent he had no business to set up such a claim in the rent suit. His conduct should disentitle him to all sympathy provided the zemindar succeeds in proving his right to enhance the rent. The utmost leniency that can be shown to such a ryot is to allow him to abandon the tenure and to pay off the zemindar the full amount of arrears of rent admitted by him. Although the zemindar becomes a little loser by this, but he avoids the chance of a protracted litigation. In suits of this nature where the zemindar succeeds in proving his case, the Court should be bound to declare that the ryot has lost all claims to hold the land after the expiration of the period for which the enhancement was claimed, and in execution of the very decree the zemindar should be allowed to eject the ryot. But should the zemindar neglect to eject the ryot within one year, calculated from the end of the year for which the enhancement was claimed, he should be deemed to have forfeited his right to ejectment in execution of the decree. But this penal provision should not be rendered applicable to these *bona fide* Talukdars whose rents can only be enhanced on the grounds stated in Section 51 Reg. VIII. of 1793.

The memorandum of Moharajah Sir Jotendra Mohun Tagore Bahadur K. C S. I. on the subject of affording facilities for the easy recovery of rents is indeed unassailable. No body can deny that collective suits for the realization of rents would be beneficial to the ryot and the zemindar equally. A collective application should be also allowed for distraint of crops. Those who consider

the law of distraint to be hard they know very little about the real condition and habits of the ryots. Distraint saves them from accumulated interest and cost of litigation. Moharjah Sir Jotendro Mohun Tagore Bahadhur made the undermentioned proposals for the easy recovery of rents. "Under the circumstance, a law for the recovery of rent which would be at once cheap, speedy, efficacious, and just to all parties, has become absolutely necessary. Having been invited by His Honor the Lieutenant Governor to suggest a scheme for the amendment of the law in this respect, I venture to submit the following" :—

"Firstly.—Without disturbing the present rent kists or instalments which vary according to local usages, I would declare a specified quarter-day for the payment of the quarter's rent, failing which a suit for arrear shall lie. Where the kists are monthly, as they are for the most part, the zemindar shall be entitled to receive the rent according to monthly instalments, but if the monthly instalments be not liquidated by the quarter-day aforesaid, he shall be competent to institute an arrear suit."

"Secondly.—In default of the quarterly instalment as suggested above, the zemindar or the rent receiver shall be competent to make an application to the Collector, setting forth the name of the defaulting ryot, description of the holding, and the mouzah in which it is situated, the amount of the annual rent, the amount due, and the period for which the same may be due, with a statement of accounts giving details of the Jumma or rent, the instalments in which it is payable, and the amount paid or payable by the ryot up to the end of the quarter. But the application and the amount should be verified by the naib or gomastah as the case may be."

"Thirdly.—With a view to save costs and trouble, the zemindar should be allowed to sue the defaulting tenant collectively, by an application written on a stamped paper of eight annas

value. This sort of collective suit is permitted under the N. W. P. Rent Act, and also under the Agrarian Disturbances Act. I recommend a stamp fee of eight annas for a collective suit in order to lighten the burden upon the ryot."

"Fourthly.—On receipt of the application the Collector should serve a notice upon the defaulting tenant or tenants calling upon him or them to pay arrears due with costs up to that stage, or to deposit the sum in the Collector's Kutchery, if he or they should contest the demand. The notice should state, that if the payment or deposit be not made within fifteen days from date of service of notice, the tenure of the defaulter or defaulters shall be sold by public auction on the day to be fixed in the notice, which should be served by a single peon upon all the defaulters residing or holding land in the same village, firstly, by affixing it in the Zemindars Kutchery if any, in or near the mouzah; secondly, at the police thannah if any, in or near the mouzah; thirdly, in some conspicuous part in the village; fourthly, by proclamation or beat of tum tum in the village; fifthly, by affixing it on the land on account of which the rent is due. The serving peon shall procure the signatures of three substantial residents residing in the neighbourhood in attestation of the notice having been brought and published on the spot. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the Kutchery of the nearest moonsiff, or if there should be no moonsiff to the nearest thannah, and there make a voluntary oath of the same having been duly published. Certificate to which effect shall be signed and sealed by the said officers and delivered to the peon."

"Fifthly.—The sale of tenures should not be stayed unless the arrear claimed be deposited. In case the defendant make a deposit and propose to contest the suit, the Collector should

try it under the procedure laid down in Act VIII of 1869. The zemindar, or the person claiming the rent, shall be entitled to take out the deposited amount, on giving proper security."

"Sixthly.—Should the Collector find that the demand is not just, or is in excess of actual amount due, he should levy a fine upon the claimant, not exceeding twice the amount so claimed in addition to all cost, and should make over the damages so realized to the defendant by way of compensation. Should it appear that the accounts made up for the zemindar have been falsely or fraudulently prepared by the attesting servant of the zemindar, he, the servant should be liable to a criminal prosecution."

"I propose the above procedure for the realization of rent from ryots having occupancy or mookarari rights. I am aware that under the present law occupancy tenures are not saleable or transferable, but in many districts the usage sanctions sale for arrears of rent which is largely resorted to in practice. I would legalize the sale to that extent. The purchaser shall have the same right and interest that the defaulting tenant possessed. I should observe that the existing law enjoins the eviction of the occupancy ryot in lieu of the sale of the tenures, but the Courts are generally reluctant to enforce this provision in as much it throws the ryots adrift. Under my scheme the ryot may, if he likes, buy in his own tenure, or if it be sold to a third party he will obtain a fair value for it."

"It will be observed that I proposed to place the whole procedure in the hands of the Collector. But should the agency of the Civil Court be considered preferable, I would suggest that the proceedings in the Civil Court should take place only when there would be contention, and after the deposit has been made in the Collector's Kutchery by the defendant. The procedure of the Civil Court should of course be the same that has been prescribed in Act VIII of 1869 B. C.'

"*20th August 1876.*"

"*P. S.*—With regard to non-occupancy tenures the preliminary procedure suggested above will apply; in case the arrear adjudged be not paid, the defaulter should be evicted."

CHAPTER XIV.

Khamar Lands.

According to section 5 of the Bill a zemindar, in order to complete his title over his Khamar land, must hold it for twelve years before the commencement of the Tenancy Act, Section 6. "All land which is not Khamar land shall be deemed to be Ryoti-land, and all land shall be presumed to be Ryoti land until the contrary is proved." I think this section takes away from the zemindar all fallow lands and gives them to the ryots, for the words "all other lands are Ryoti-land" are very comprehensive. Section 6 has created a right in favor of the ryots over all lands which have not become Khamar under Section 5 of the Bill. I should therefore consider myself highly obliged if any one of my readers will answer my following queries.

I. A, a zemindar has taken some 50 Biggahs of land as his Khamar abandoned by his ryots some ten years before the commencement of the Tenancy Act; B, a ryot sues the zemindar to get possession of the said land on the ground that he had no right over it, it is a Ryoti-land and as such belongs to the plaintiff. Is he entitled to a decree?

II. A, a zemindar clears off a large tract of jungle and sowes cotton there; can B, a ryot sue A for those lands, on the ground that he has no right to extend his Khamar lands as "all other lands are ryoti" and as a matter of course belong to the ryots?

III. Suppose B, succeeds in both these cases, can not W. X. Y., and Z, ryots of A come in for their share and sue poor B, for a rateable distribution of those lands, for "all other lands

must belong to all the ryots, and so can not another batch of ryots again sue W. X. Y. and Z, for their share and so on ?"

Lands abandoned by the ryots, and all fallow lands as a matter of right belong to the zemindars who can use them in any manner they like. The ryots never dreamt of making any claim to them. Act X of 1859 did not also interfere with the absolute proprietary right of the zemindars over those lands. There is no such thing in Bengal as unoccupied Ryoti-land. But the philanthropic framers of the bill by one stroke of their pen robbed the poor zemindars of their vested rights and made over all the lands to the ryots. I do not know, what earthly reason can be assigned for the spoliation of this private right of the zemindars. It is one thing to make laws for the protection of the ryots in their existing rights, but it is quite another thing to commit robbery upon others to enrich the ryots. I may have put an erroneous interpretation upon Section 6 of the Bill. Some of our friends have tried to point out that the authors of the bill by declaring "all other lands to be ryoti" never intended to give the ryots the privilege of compelling the zemindars to give them lands as suggested by me in question I to III. The Bill wants to put a check upon the power of the zemindars to defeat the inherent right of a settled ryot to acquire a right of occupancy over land as soon as he acquires it as a ryot, on the ground that the said land is included in the Khamar created within 12 years of the Tenancy Act. I may be wrong in putting the interpretation upon Section 6 of the bill as I have suggested by the above questions, but I ask, is there any thing in the bill to prevent a Radical Court to interpret Section 6 of the Bill in the way I have done? The authors of the Bill intended to extend the right of the ryots, and the bill was started with the theory that the land belongs to them. At any rate, the settled ryots will acquire right of occupancy

as soon as lands belonging to Khamar created within 12 years of the Tenancy Act, are given to them.

A, a zemindar cleared off some 300 Biggahs of land in 1880 and manured them well, and did every thing to make them highly fertile, but in 1882, without knowing any thing about the Tenancy Bill, leases them out to some of the settled ryots for three years only; but strange to say, in 1883 our rulers tell the zemindar that he can not take back the lands he has given to his ryots. The misfortune of the zemindar does not end here, the ryots, who obtained the lease of those lands under a contract to give a specified amount of rent for the period of the lease, shall be entitled to bring a suit under Section 79, for abatement of rent on the ground, that their rent is higher than it ought to be according to the prevailing rate of the adjacent places. By Chapter V of the bill every bit of cultivated land is taken away from the zemindar, who has now left him only the jungles, and lands covered with water which he may bring into cultivation at his own expense and lease out to ryots on advantageous terms; but this little advantage too must not be allowed him; some measure must be adopted to deter him from doing so, and therefore Section 6 of the Bill declares "all lands shall be presumed to be Ryoti."

At present zemindars lease out their jungle lands at low rents to the ryots for some fixed term of years, at the expiration of which, a new Bund Bust is made for those lands either with the former ryots or with some new ryots. Will the zemindars now lease out their reclaimed and chur lands to any ryot, much less to a settled ryot, who is to acquire a right of occupancy over lands as soon as he touches them?

When the whole world has adopted the principle of free trade, our legislature wants to take away the free use of property from one man and gives it to another who has neither the means nor willingness to use it. I think the provisions relating to

Khamar lands in the Bill will put a stop to further extension of cultivation in Bengal.

CHAPTER XV.

The Permanent Settlement.

The advocates of the tenants' rights urge the following grounds in justification of the Tenancy Bill.

1. Zemindars had no proprietary right in the land, previous to the Permanent Settlement they were mere Collectors of Taxes, and that they could be removed from their offices at the option of the Govrnment. If the laws creating the Permanent Settlement gave them any right, that right ought to be curtailed as far as it goes to encroach upon that of the ryots, who were no party to the contract entered into between the Government and the zemindars; and if possible, that Settlement itself should be set aside, as it was, a financial blunder entailing heavy loss upon the Government and injuries upon the ryots. The Government reserved to itself the power of enacting such regulations as may be thought necessary for the protection and welfare of the ryots. See clause I, Section 8, Regulation I of 1793.

I need scarcely observe, that according to rules of interpretation all laws and contracts should be so interpreted as one part of them may not be neutralized by the other. If we assume that under Section 8 of Regulation I of 1793, the Government reserved to itself the power of interfering with the rights and privileges of the zemindars given to them by the Code of 1793 and the Sale laws, then what was the good of so solemnly telling them, that subject to the restrictions contained in the regulations, they are to be at liberty to let out their remaining lands in any manner they think proper, and that "no power will then exist in the country by which the rights vested in the landholder by the Regulations, can be infringed or the

value of the landed property affected." Now, I ask the advocates of the ryots to say whether the Tenancy Bill, if passed into law, will affect the rights of the zemindars or not? The Government, no doubt can enact laws and regulations for the protection of the ryots, but these laws must not be inconsistent with the rights of the zemindars as confirmed to them by the Code of 1793. The reservation clause was simply intended for the protection of the ryots from the imposition of fresh *abwabs* and other illegal acts of the zemindars. Besides, the Government never reserved to itself the power of extending the right of the ryots. At the most, it can make laws for the protection of the ryots in the enjoyment of the rights they actually possessed at the time of the Permanent Settlement. It cannot create any new right in favor of the ryots or restore them to some imaginary rights. If the Government at the time of the Permanent Settlement entertained any intention of interfering with the rights and privileges of the zemindars which were so much reduced by the regulations creating the Permanent Settlement, it ought to have, in clear terms, expressed it at that time or at least during the past thirty or forty years of the Permanent Settlement when the zemindars had to pledge the ornaments of their wives and children and those belonging to their family idols for the punctual payment of Government revenue.

We are now seriously told that the zemindars may be the proprietors of their zemindaries, but they are not the *maliks* of them in the sense in which the said word is understood in India. I shall not be at all suprised in these days of telephonic and telegraphic communications if the future generations of our rulers were to declare, that the past generations of the officials were no doubt owners of their *salaries*, but they were not the proprietors of them in the sense in which the word was used in

India, and so their children have no right to the accumulated wealth of their fathers; they could have only used the money they received as salaries from the public fund, and as servants of the public their savings should be distributed among the deserving members of the public body. The framers of the Tenancy bill, should pause and see how they are endangering the rights of their own descendants by changing the meaning of the words "owner" "proprietor" &c. :

What was the position of the zemindars before the Permanent Settlement?

We have no authentic record to show what was the position of the zemindars during the Hindu period, but this much can safely be asserted that before the Mahomedan rule, India was divided into numerous petty principalities of which the rulers were to all intents and purposes independent sovereigns. In Maundo, and Mahabharat we find the description of kingdoms which do not appear to have been more extensive than many of the zemindaries of the present day; the utmost that can be said is that they were subjects (to a certain extent) to a paramount authority. Mr. Ballie and Golam Hoshen Khan the author of the Syrul Mootakherin were also of opinion that the zemindars of this country held a position identical with, or allied to that of Rajahs. Even during the Mogul period they exercised many of the regal powers which were taken away from them by the laws creating the Permanent Settlement. Zemindaries like independent Raj used to devolve upon the eldest son of the zemindars, and that custom was superseded on the introduction of Hindu and Mahomedan laws by Regulation XI of 1793. Zemindars are spoken of in Histories of India as early as the time of Mohomed Sebuctagin 1030 A. D. We find in Harrington's analysis an extract from the Canongho records, which mentioned of the zemindars of a date so early as 1650 A. D.

The Tucksim Jamah or rent roll of Todermull as given in the Ayan Akbari, puts down a military contingent of infantry, cavalry, elephants, war-boats &c., against the mahals over and above their Sudder Jamah.

Perhaps it will be admitted by the warmest friends of the ryots that this military contingent could never have been supplied by the cultivators of Bengal.

Zemindaries could be bought and sold. Zemindaries used to be sold for arrears of revenue, and the title of the purchasers. in By Sultani, was considered to be of a superior nature. In these sales the defaulting zemindars had to sign a bill of sale which were attested by the Cazy Canongho and other creditable witnesses, and the name of the new zemindar was entered in the Sherista or public records. We find in Harrington's analysis that zemindaries could be acquired by sale, gift, and inheritance. Zemindars were only ejected from their zemindaries for continual default of the payment of Revenue, contumacy, and rebellion. When any zemindary was confiscated for the offence of treason committed by the zemindar, it was generally given to his eldest son or to any other near relative. Zemindaries were never conferred on strangers at discretion to the prejudice of the heirs of the zemindars. It is true, that now and then the principal zemindars applied for Sunads and received them from the Emperor as a mark of distinction; but the inferior zemindars always succeeded to their zemindary according to their laws of inheritance and without any Sanad. If the zemindars were simply Government officers removable at the discretion of their employers, they could never have maintained their position amidst the persecution to which they were exposed, nor saved their lands from wholesale confiscation during the Mahomedan reign in India. It was because of their peculiar relations with the ryots that the

Mahomedan Government hesitated to confiscate the lands, and the British Government also, in its earliest days, thought it expedient not to disturb the zemindars but to leave them contented with their position and bind them to Government by the strongest of the ties,—their own interests. If the acts of sale purchase, gift, and inheritance as enumerated above, do not constitute ownership, I should like to know what else would do? Permanent Settlement was not made with strangers but with the actual proprietors of the land, Section IV, Regulation VIII of 1793. Regulation I and II of 1793 speak of zemindars as actual proprietors of the land, and a malikanah allowance was given to those who declined to accept the Settlement. This argument, that the zemindars were the absolute owners of the land and that they were accepted at the time of the Permanent Settlement as such, is strengthened by the whole pure-view of the Code which is inconsistent with any other view, and by the numerous official complaint of the Code—Lord Hastings Minute December 31st 1819. Permanent Settlement is now condemned as a financial blunder committed by Lord Cornwallis, but the position and the pressing necessity of the Government of that time are often forgotten. Permanent Settlement secured punctual realization of Government revenue and thereby supplied the Government with the sinews of war, to put down Maharattas, Sheiks and other chiefs of India.

When the Permanent Settlement was concluded money was so scarce, and the advantages of the system so great, that the then Maharajah of Burdwan, in order to save his zemindary from public sale, was compelled to adopt the same in his zemindary by granting *Putni* leases. But the Rajas of Nattore, the biggest zemindars in Bengal, depended on Khash collection and thereby fell victims to the sale law. If these two zemindars with native agency

could not recover their rents by Khas Collection, how could Government do it? I think the cost of collection would have devoured every farthing of the money collected. When many of the zemindaries were sold off for arrears of revenue, and the remaining few had to be saved by the sale of ornaments, plates, &c., of the zemindars, I do not think a Temporary Settlement at that time could have secured to Government its main object, *viz.* punctual realization of its revenue; a Temporary Settlement could not have tempted the calculating capitalists of Bengal to invest their money in land. It must be remembered that most of the settlement holders were swept away by the rigour of the sale law, and a new class of zemindars sprang up in their place under the operation of the said law, who having other lucrative avocations of their own, paid the Government revenue punctually in anticipation of a future

APPENDIX.

The law relating to distraint is considered as a hard measure and open to be abused by the Zemindars. The Behar Zemindars have been charged with the abuse of the power given to them by the law relating to distraint; but as far as my experience of Eastern Bengal goes, I can safely assert without fear of contradiction that the law of distraint, on account of the sympathy of the Moonsiffs for the ryots and the lying propensity of the latter, has become quite useless.

95 per cent of the ryots either resist distraint or forcibly, or clandestinely remove the distrained property, and when they do so, zemindars very seldom succeed in getting them punished under section C, I, of Act VIII (B. C,) of 1869.; because in such cases the villagers generally appear and give evidence in favour of the accused ryot. The witnesses for the zemindars are disbelieved on the ground that they are the servants of the zemindars and do not reside in the village where the occurence took place. Whenever a charge under section C, I, is brought against a defaulting ryot, he denies every thing from the beginning to end, and his allegations are supported by the evidence of the other ryots of the village who have a common cause to oppose the zemindar in the recovery of his rents. But when a combination is formed by the ryots to withhold the payment of their rents, no servant of the zemindar ventures to go to the village for the purpose of distraining the crops,

Section 74 of Act VIII (B. C), of 1869 affords facilities to the defaulting ryot to remove the distrained property to the prejudice of the zemindar; when the defaulter receives notice of the distraint, he generally comes first in the field to reap the crops, and it frequently happens, that fights take place no sooner zemindar's men and the ryot meet in the field. defaulting ryots very seldom care to obey the distraint made by the zemindars, and whenever the ryots are detected in the act of removing the crops they generally become desperate and assault the zemindar's men seriously, and sometimes these fights end with serious consequences. To remedy these evils I would propose the following alterations in the existing law for distraint.

(1.) The District and Sub-Divisional Officers should be authorized, on application from the zemindars, to distrain the crops through the agency of the regular police.

(2.) The order of distraint and demand for the arrear should be issued simultaneously.

(3.) The officer issuing the distraint should be authorized to punish the defaulter for disturbing the distraint.

(4.) One application should be allowed against any number of defaulters in the same or contiguous villages.

(5.) The officer entrusted with the distraint should be authorized to compel the attendance of the defaulters to reap the harvest ; and they should also be requested to come forward with their friends to reap the harvest as they always do in the reaping season ; if they neglect to do so, the officer entrusted with the distraint should be allowed to hire labourers, and he should report about the storing of the crops to the officer in charge of the nearest police station, who should proceed to the spot and sale the crops within 10 days of the storing of the crops.

THE BENGAL TENANCY BILL.

REMARKS

ON

A PAPER READ BY

W. S. SETON-KARR, ESQ.
(*Late of the Bengal Civil Service*),

AT A MEETING OF

THE SOCIETY OF ARTS.

BY J. DACOSTA.

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THE BENGAL TENANCY BILL.

LONDON, *26th March*, 1884.

Mr. Seton-Karr's paper on the Bengal Tenancy Bill and the discussion which followed its lecture, as published in the "Society of Arts Journal" of the 14th instant, bring to light an extraordinary conflict of views regarding the measure.

The supporters of the Bill generally declare that it is intended to secure the cultivators in the possession and enjoyment of their fields, and afford the landowners due facilities in the recovery of their rents. Its opponents (among whom are most of the Bengal officials) aver, on the contrary, that it would prove ruinous to the cultivators, by subjecting them to be rack-rented at the will of the new middlemen, whom the Bill would call into existence; and that it would involve a breach of public faith, by violating the solemn pledge which the Government of India gave to the landowners of Bengal in 1793, with the concurrence of the Crown and Parliament of Great Britain.

Between these conflicting statements it is of the utmost importance, for the honour of the British name as well as for the prosperity of India, that the truth should be discovered. Unfortunately Mr. Seton-Karr's paper affords no assistance in the solution of the difficulty. While expressing himself generally in favour of the Bill (although he considers it "too comprehensive" and condemns the clauses on compensation for disturbance and improvements, as based on great ignorance of the actual state of things), he makes no attempt to refute the charge, that the Bill would injuriously affect the position of the cultivators. Indeed, the drift of his remarks substantially affirm that charge; for while he is greatly concerned about the protection he claims for the new middlemen, whom he styles "tenant-proprietors," he would extend no protection to their under-tenants, the actual cultivators, and contends that "the less we try to legislate for the latter class, the better." This position is entirely opposed to the views on which Mr. Bright and others endeavoured to enlist the sympathies of the public in favour of the measure. It was with the protection and welfare of the actual cultivators of the soil that Mr. Bright and his friends were concerned; they had no sympathy with the middlemen, and regarded them much in the same light as they are represented in the Moorshedab Collector's report, of 18th May last, in which it is said: "*A ryot ceases to be a ryot when he ceases to cultivate; and when he sublets, he*

becomes the most oppressive of all landlords, a petty middleman. To protect the actual cultivator is well; to put a man between him and the zemindar can only injure one or the other." Nevertheless, the main provisions of the Bill would create a new class of petty middlemen who would be vested with full power to rack-rent their tenants the cultivators, and be free from the restrictions, as to the enhancement of rent, which are imposed on the landlords.

For the justification of the confiscatory clauses in the Bill, Mr. Seton-Karr has no new argument to offer, but reiterates the one adduced by Mr. Ilbert, viz., that the position of the landowner in Bengal does not correspond to that of the English owner in fee simple. A comparison between the two seems unnecessary and misleading, seeing that the zemindar does not rest his case on any identity in his position with that of the English landowner in fee simple: his rights are derived from the Permanent Settlement, and Mr. Seton-Karr does not even attempt to show that the confiscatory clauses in question are consistent with the terms of that compact.

The opponents of the Bill (specially the Bengal officials) have said that its provisions are calculated to set class against class, to foster strife and litigation, and prove ruinous to both landowners and cultivators. There is much in Mr. Seton-Karr's remarks that confirms this opinion. He says: "I have sometimes thought whether the

Bill, with its 230 sections, besides schedules and appendices, might not be too comprehensive. Intelligent natives are perplexed and harassed by our ceaseless flow of legislation. I remember a Bengal zemindar of conspicuous ability, whose outlay for stamps used for litigation and agricultural business, averaged £7,000 a year; and he and his agents were perfectly bewildered by supplementary, amending and explanatory laws. The scope and object of one had only just been mastered when it was ruthlessly swept away."

While entertaining the above views on the mischief resulting from complicated legislation and constant changes in the law, Mr. Seton-Karr nevertheless adds: "Yet when I recollect that the Rent Commissioners, the late Lieut.-Governor, and the Viceroy and his Council are in favour of one new comprehensive enactment, I waive my own objections, even though I am aware that the new Bill consigns to oblivion many of the best known Regulations and Acts, well understood by the zemindar, not too complicated for the tenantry, and endeared by long practice to the official mind."

Thus it appears that Mr. Seton-Karr waives his objections to the Bengal Tenancy Bill, not from a full conviction of its merits, but, in a measure, from deference for the opinions of others. It becomes necessary, therefore, to see what value should be attached to those opinions. In the first place there is no evidence before the public

that the present Bill has the approval of Sir Ashley Eden, seeing that, after it had passed out of his hands, it was altered by the Government of India. On the other hand, some of the late Lieut.-Governor's public utterances show that, in his estimation, the Bill is, to a great extent, unnecessary and defective. Unnecessary, because according to him, the Bengal ryots are already under the existing law, able to uphold their rights, and obtain prompt redress for any wrong; and defective, because the Bill does not accomplish the special object for which legislation was in this instance, undertaken by Sir Ashey Eden himself, namely, for affording facilities to landlords in the recovery of their rents.

As regards the Viceroy's opinion, it can carry no weight on a subject on which His Excellency has had no administrative experience whatever, and as for the opinions of the members of his Council, their minutes have not been published. We are left, therefore, to the views expressed in the report of the Rent Commission, and with regard to them, it must be remembered that they are simply the views of the three or four officials, who were specially instructed in the preparation of the very measure in question; that, notwithstanding the vast and complicated interests involved in the Bill, the Commission collected no evidence for their guidance, and abstained even from examining the parties interested (which would show that their views were pre-determined and required only to be

formulated); and lastly, that three out of the seven members who signed the report, appended notes expressing their dissent from its tenor. To the public, therefore, the opinions, in deference to which Mr. Seton-Karr has waived his objections, might not appear entitled to much weight.

Then as to the necessity for legislation on the broad lines of the Bengal Tenancy Bill, Mr. Seton-Karr says: "After nine years of disturbance, copious reports and the concurrent testimony of some of the ablest administrators, there was nothing for it but fresh legislation." But the existence of this "nine years' disturbance," was never heard of by the public, and is unrecorded in the administration reports of the province, which testify to a different and contrary state of things; and as regards "the copious reports and concurrent testimony," if these be the papers which the Government of India published in support of the Bill, the objections which have been taken to them should be considered, before their value can be ascertained. But on this point we have the direct testimony of the Chief Justice of Bengal, whose minute was written after a careful perusal of those copious reports published by the Government. Sir Richard Garth says: "*The question is whether there does or does not exist any such necessity, as justifies the Government in depriving the landlords in Bengal, of their rights and privileges, in the manner proposed in the Bill. I see no such necessity, and I*

am bound to say, that among the many complaints on behalf of the ryots, which have been published by the Government, in connection with this subject, I have been unable to find a single statement, that the ryots themselves required anything of the kind. The deprivation to which I allude, was never, as far as I can ascertain, even suggested by the ryots."

While Mr. Seton-Karr's paper contains many interesting details and general propositions, it omits to discuss the main points upon which alone the introduction of the Bill could be justified. Among his general propositions is the following: "Agriculture is the greatest interest in India, and a good system of revenue, rent and tenure lies at the bottom of all its social advancement." The conclusion he evidently points to here is that Bengal is in want of a good system and is to receive it through the Bengal Tenancy Bill. But, seeing the rapid social advancement and prosperity which have marked the history of Bengal for nearly half a century, as testified by successive Lieutenant-Governors and by officials throughout the Presidency, the obvious inference from the above proposition, is that the existing system in that Province cannot be a bad one, and that wholesale and revolutionary changes, such as are proposed in the Bengal Tenancy Bill, should, therefore, be deprecated.

Looking at the diametrically opposed views which are expressed by the landed classes and the

bulk of the officials in Bengal, on one side, and by the supporters of the Government on the other, the public will not be satisfied with any solution that may be suggested, or may be adopted by the Government, unless all the information that can be afforded on the subject, is placed within its reach. Parliament alone has the power to obtain that information; but India has no representative in Parliament, and her interests may be neglected by its members without entailing the consequences which a neglect of the interests of their constituents would involve. There are however many men in Parliament whose sense of justice has led them to defend the rights and interests of the people of India, whenever these were unjustly assailed, and who have recognised that, in accepting the power of interfering on behalf of India, they have virtually accepted the responsibility inseparable from that power.

The interference of Parliament in the details of Indian administration has, justly no doubt, been deprecated as likely to prove oftener injurious than beneficient; but no such interference is called for in this instance. The present case stands thus. A revolutionary Land Bill has been introduced in Bengal; the public mind there is greatly disturbed, and landed property is seriously depreciated; public meetings are being held all over the Presidency, strongly protesting against the injustice of the proposed measure, and memorials to the same effect have been presented to the

Viceroy, the Indian Secretary of State and to both Houses of Parliament. These things have been going on for a year, and, looking at the increasing uneasiness manifested in Bengal, no abatement of the evil can reasonably be looked for until the extraordinary questions raised by the Indian Government in the Bengal Tenancy Bill have received a satisfactory solution.

Under such circumstance can Parliamentary action be wrong in calling for information which cannot be obtained through any other means?—At present Parliament and the public are left to derive their knowledge from private sources upon a question of vital importance to fifty millions of our fellow-subjects; and when the contradictory nature of the information and opinions tendered by irresponsible persons is considered, can any doubt exist on the expediency, nay the urgency, of Parliament intervening in the interests of truth and justice, by calling for the papers connected with the proposed measure?—Both the above questions will doubtless be answered in the negative by all who are impartial in the matter; and it is earnestly to be desired, therefore, that some member will give the subject the consideration it deserves, and will accept the duty which circumstances have rendered imperative.